

(16,379.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. 600.

AUSTIN WALRATH, APPELLANT,

vs.

THE CHAMPION MINING COMPANY.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR
THE NINTH CIRCUIT.

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*In the Superior Court of the County of Nevada, State of
California.*

AUSTIN WALRATH,

Plaintiff,

vs.

THE CHAMPION MINING COMPANY,
(a Corporation), and JOHN DOE,
and RICHARD ROE, and PETER
STYLES, whose real names are
unknown,

Defendants.

Complaint.

Now comes the plaintiff in the above-entitled action and for cause of action against the defendants, alleges:

That the real names of the defendants John Doe, Richard Roe and Peter Styles, three of the defendants, in the above-entitled action, are unknown to the plaintiff aforesaid, and plaintiff prays that when the true names of said defendants, sued herein as John Doe, Richard Roe and Peter Styles, become known, such true names may be inserted herein, with proper and apt words to charge them:

That The Champion Mining Company, one of the defendants in the above-entitled action is now, and at all the times hereinafter mentioned, has been a corporation, duly formed, organized, and existing under the laws of the State of California:

That R. C. Walrath, J. V. Hunter and Austin Walrath, the said plaintiff, are now, and continuously for

more than 18 years last past, have been the owners in common, in the possession in common, and entitled to the possession in common of all that certain piece or parcel of land situate, lying and being on the south side of Deer creek, about one mile below Nevada City, in the County of Nevada, State of California, and bounded and described as follows, with magnetic variation at 18 degrees east, to-wit: Beginning at oak tree, 36 in. in diameter, marked "P. Co. No. 1," on E. side, which stands on the croppings of the Providence quartz ledge, on the W. side of Dingley's orchard; thence N. 39 degrees W., descending 4 chs. to stake marked "P. Co. No. 2," with mound of rocks; thence N. 58 degrees E. along face of hill 9 chs. and 10 links to fallen oak marked "P. Co. No. 3" 16 chs. to stake marked "P. Co. No. 7," with mound of rocks; thence N. 33 degrees 30 minutes W., descending 1 chain and 50 links to south bank of Deer creek 3 chains to middle of channel, 3 chs. and 80 links to large rock on N. side of said creek; thence 71 degrees W., along N. side of said creek 4 chs. and 90 links to an oak tree, 6 in. in diameter, blazed and marked "P. Co. No. 9"; thence south 26 degrees and 30 minutes E. 1 chain to middle of Deer creek, 2 chains to top of large boulder on S. bank of Deer creek, from which a maple, 4 in. in diameter, bears S. 30 degrees E. at the distance of 90 links; thence S. 73 degrees W. along S. side of Deer creek 8 chs. and 40 links to a point from which the mouth of the tunnel bears S. 10 degrees E. at the distance of 20 links, 9 chs. and 80 links to top of boulder, 8 feet in diameter, in bed of said creek; thence

south 43 degrees W. along bed of said creek 1 chain and 90 links to section line between Sections 11 and 12 of Tp. 16 N., R. 8 E., 5 chains and 50 links to a point from which the mill standing on the east side of the mouth of Peck's ravine bears S. 8. degrees E., at the distance of 50 links, 10 chs. and 70 links to stake marked "P. Co. No. 12," with mound of rocks at foot of a point of rocks; thence S. 38 degrees, 30 minutes E., along face of hill 9 chs. and 80 links to stake marked "P. Co. No. 13," with mound of rocks at the corner common to Secs. 11, 12, 13 and 14, of Tp. 16 N., R. 8 E., M. D. B. and M., from which a spruce tree 36 in. in diameter bears N. 34 degrees W., at the distance of 70 links; thence S. 33 degrees E. along the face of the hill 5 chs. and 95 links, to a spruce 40 in. in diameter marked "P. Co. No. 14," on its east side; thence S. 18 degrees E. 6 chs. and 10 links to a spruce 30 in. in diameter, marked "P. Co. No. 15," on its E. side; thence N. 85 degrees 30 minutes E. 75 links to middle of Peck's ravine, one chain and 51 links, to stake marked "P. Co. No. 16," with mound of rocks; thence S. 24 degrees E. along E side of Peck's ravine 9 chs. and 82 links to stake marked "P. Co. No. 17," with mound of rocks, besides a pine tree 3 in. in diameter; thence N. 77 degrees E. 1 chain and 52 links, crossing croppings of ledge 4 chains and 54 links, to a stake marked "P. Co. No. 18," beside a pine tree 4 in. in diameter; thence N. 14 degrees W. along western slope 19 chains and 20 links to Sec. line between Secs. 12 and 13, Tp. 16 N., R. 8 E., 27 chs. to stake marked "P. Co. No. 19," with mound of rocks; thence S. 74 degrees W. 44 links, to Rough & Ready

ditch, 3 chs. and 3 links to the place of beginning, containing 33 92-100 of an acre of land. The same being known on the 28th day of April, 1871, at the Land Office at Sacramento as Mineral Entry No. 7, and designated as Lot No. 40, on W. $\frac{1}{2}$ of Sections 12 and 13, and E. $\frac{1}{2}$ of Section 11, all in Township 16 north, of Range 8 east, M. D. B. & M., Nevada Mining District, Nevada county, California, together with all ledges, lodes and veins of ore, minerals, metals, gold or silver, and gold or silver bearing rocks or quartz or earth therein, or thereon or thereunder.

That continuously, for more than thirty years last past the said R. C. Walrath, J. V. Hunter and the plaintiff, Austin Walrath, have been by themselves, their ancestors, predecessors in interest, and grantors, in the open and notorious, exclusive and uninterrupted ownership and possession of said land premises herein described, and all ledges, lodes and veins of ore, minerals, metals, gold or silver, and gold or silver bearing rock, or quartz or earth therein or thereon, or thereunder, claiming the same openly, notoriously, exclusively and adversely against the whole world, and have almost constantly during said period of thirty years been engaged in mining and working the lodes, ledges and veins of ore, minerals, metals, gold and silver, and gold and silver bearing rocks and quartz and earth on and in said land and premises and in extracting therefrom gold and silver.

That said R. C. Walrath, J. V. Hunter and the plaintiff, Austin Walrath, have by themselves, their predecessors in interest and grantors continuously paid, during the thirty years last past, all the State,

county and municipal taxes, which have been levied or assessed against said land or premises, or said property, and have erected thereon mills for crushing ore taken out of said land, hoisting works and houses, and have sunk inclines and shafts thereon, and run drifts and tunnels therein, all for the purpose of removing from said land the ore, gold and silver bearing quartz, rock and earth, and extracting therefrom the pure gold and silver, and have expended in making such improvements over the sum of \$3,000,000.00.

That the defendants, within the two years last past, have, without the knowledge or consent of the said R. C. Walrath, J. V. Hunter and Austin Walrath, the plaintiff, and without the knowledge or consent of either or any of them, and without right or title, run a drift, tunnel, or incline from the mine of the defendant, the Champion Mining Company (which adjoins said above-described land and premises on the north), into and upon the land and premises above described, for a distance of more than 158 feet, and have extracted from said ledges, lodes and veins in and upon said land and premises above described, large quantities of ore, gold and silver bearing quartz, rock and earth of the full value of \$300,000, and have removed said ore, gold and silver bearing quartz and rock and earth, the property in common of said R. C. Walrath, J. V. Hunter and Austin Walrath, from said land and premises above described, and converted the same to their own use, to the damage of the said R. C. Walrath, J. V. Hunter and Austin Walrath, the plaintiff, in the full sum of \$300,000.

That the defendants are now extracting ore and gold bearing quartz, and rock and earth from said

ledges, lodes and veins, and from said land and premises above described in common of said R. C. Walrath, J. V. Hunter and Austin Walrath, and threatens to continue so to do to the irreparable injury of the said owners in common thereof.

That said defendants have not, nor has either, or any of them, ever had any right, title or interest, or property in or to said land or premises, or in or to either or any of the ledges, lodes or veins of ore, or gold or silver bearing quartz or rock, or earth therein, or thereon, or thereunder.

That said R. C. Walrath and J. V. Hunter immediately prior to the commencement of the above-entitled action sold, assigned, transferred and set over to said Austin Walrath, the plaintiff, all their right, title, interest and property in and to the cause of action herein set out against the defendants, and to the whole thereof, and the said plaintiff is now the owner and holder thereof.

That neither the said R. C. Walrath, J. V. Hunter, nor the plaintiff, Austin Walrath, had any knowledge of any of the wrongful acts of defendants hereinbefore recited, until January, 1892.

Wherefore, plaintiff prays the judgment and decree of this court; that the plaintiff do have and recover from the defendants the sum of \$300,000; that the defendants, and each of them, their agents, servants, employees and representatives be enjoined and restrained from entering into or upon the land hereinbefore described, and from working or mining therein, thereon, or thereunder, and from extracting, removing, mining or working any of the ledges, lodes or veins of ore,

gold bearing quartz, rock or earth, and from in any way interfering, meddling, mining, extracting or removing any ledge, lode or vein of mineral, metal, gold bearing quartz, rock or earth in or upon, or under said land, or premises, and for such other relief as may seem to the court just and equitable, and for costs of suit.

SMITH & MURASKY,
Attorneys for Plaintiff.

STATE OF CALIFORNIA, }
City and County of San Francisco. } ss.

Austin Walrath, being duly sworn, deposes and says, that he is the plaintiff in the above-entitled action; that he has heard read the above and foregoing complaint and knows the contents thereof; that the same is true of his own knowledge, except as to the matters which are therein stated on his information or belief, and as to those matters, that he believes to be true.

AUSTIN WALRATH.

Subscribed and sworn to before me, this 21st day of May, 1892.

(Seal.)

LEE D. CRAIG,
Notary Public, City and County of San Francisco, State of California.

[Endorsed]: No. 2032. Superior Court, County of Nevada, State of California. Austin Walrath, Plaintiff, vs. The Champion Mining Company, et al., Defendants. Complaint. Filed May 24th, 1892. J. L. Morgan, Clerk. By J. J. Greany, Deputy Clerk.

*In the Superior Court, in and for the County of Nevada,
State of California.*

AUSTIN WALRATH,

Plaintiff,

vs.

THE CHAMPION MINING COMPANY,
JOHN DOE, RICHARD ROE, and
PETER STYLES,

Defendants.

**Petition for Removal of Cause to the United
States Circuit Court of the Northern District
of California.**

To the Honorable, The Superior Court of the County
of Nevada, State of California:

The petition of The Champion Mining Company, a
corporation, one of the defendants above named,
shows to the court as follows:

I.

That the above-entitled action was commenced
against this petitioner and certain other defendants
styled in the title of said cause as John Doe, Richard
Roe, and Peter Styles, on May 24, 1892, by the filing
in the above-entitled court of a complaint and the
issuance of summons thereon.

II.

That a copy of said complaint and of said summons
was served upon petitioner by delivery thereof to
Joseph S. Shuster, President of petitioner on May

28, 1892, at the City and County of San Francisco, State of California, and that the time within which this petitioner is required by the laws of the State of California to answer or plead to said complaint is thirty days from the date of the service thereof to-wit: thirty days from May 28th, 1892.

III.

That the parties named in said complaint as defendants, other than this petitioner, to-wit: John Doe, Richard Roe and Peter Styles are wholly fictitious; that no service of summons has been made upon either of said last-named parties, or upon any person or persons whatever, other than this petitioner; that the real controversy in this action is between the plaintiff in this action on the one hand and The Champion Mining Company, petitioner herein, on the other, as will hereinafter more fully appear.

IV.

That said action is now pending, and this petitioner has not yet pleaded or answered to the complaint therein, and no trial thereof has been had, and this is the first term or session of this Superior Court at which said action could be tried.

V.

That the matter and amount in dispute in said action exceeds, exclusive of interest and costs, the sum of two thousand dollars.

VI.

That said action is of a civil nature, and the following is a copy of the complaint filed in said action:

*In the Superior Court of the County of Nevada, State of
California.*

AUSTIN WALRATH,

Plaintiff,

vs.

THE CHAMPION MINING COMPANY,
(a corporation) and JOHN DOE and

RICHARD ROE and PETER STYLES,
whose real names are unknown,

Defendants.

Complaint.

Now comes the plaintiff in the above-entitled action, and for cause of action against the defendants, alleges:

That the real names of the defendants, John Doe, Richard Roe and Peter Styles, three of the defendants in the above-entitled action, are unknown to the plaintiff aforesaid, and plaintiff prays that when the true names of said defendants sued herein as John Doe, Richard Roe and Peter Styles, become known, such true names may be inserted herein, with proper and apt words to charge them.

That The Champion Mining Company, one of the defendants in the above-entitled action is now, and at all the times hereinafter mentioned, has been a corporation, duly formed, organized and existing under the laws of the State of California.

That R. C. Walrath, J. V. Hunter and Austin Walrath, the said plaintiff, are now, and continuously for more than eighteen years last past have been the owners in common, in the possession in

common, and entitled to the possession in common, of all that certain piece or parcel of land, situate, lying and being on the south side of Deer creek, about one mile below Nevada City, in the County of Nevada, State of California, and bounded and described as follows, with magnetic variations at 18 degrees east, to-wit: Beginning at oak tree 36 in. in diameter, marked "P. Co. No. 1," on E. side, which stands on the crop-pings of the Providence quartz ledge, on the W. side of Dingley's orchard; thence N. 39 degrees W., descending 4 chs. to stake marked "P. Co. No. 2," with mound of rocks; thence N. 58 degrees E. along face of hill 9 chs. and ten links to fallen oak marked "P. Co. No. 3," 16 chs. to stake marked "P. Co. No. 7," with mound of rocks; thence N. 33 degrees 30 minutes W., descending 1 chain and 50 links to south bank of Deer creek 3 chains to middle of channel, 3 chs. and 80 links to large rock on N. side of said creek; thence south 71 degrees W. along N. side of said creek 4 chs. and 90 links to an oak tree, 6 in. in diameter, blazed and marked "P. Co. No. 9;" thence south 26 degrees and 30 minutes E. 1 chain to middle of Deer creek, 2 chains to top of large boulder on S. bank of Deer creek, from which a maple 4 in. in diameter bears S. 30 degrees E. at the distance of 90 links; thence S. 73 degrees W. along S. side of Deer creek 8 chs. and 40 links to a point to which the mouth of the tunnel bears S. 10 degrees E. at the distance of 20 links 9 chs., and 80 links to top of boulder 8 feet in diameter, in bed of said creek; thence south 43 degrees W. along bed of said creek 1 chain and 90 links to sec. line between Sections 11 and 12 of Tp. 16, N., R. 8 E., 5 chains and

50 links to a point from which the mill standing on the east side of the mouth of Peck's ravine bears S. 8 degrees E. at the distance of 50 links, ten chs. and 70 links to stake marked "P. Co. No. 12," with mound of rocks at foot of a point of rocks; thence, S. 38 degrees, 30 minutes E. along face of hill 9 chs. and 80 links to stake marked "P. Co. No. 13," with mound of rocks at the corner common to Sec's 11, 12, 13 and 14 of Tp. 16 N., R. 8 E., M. D. B. & M., from which a spruce tree 36 in. in diameter bears N. 34 degrees W. at the distance of 70 links; thence, S. 33 degrees E. along face of hill 5 chs. and 95 links to a spruce 40 in. in diameter marked "P. Co. No. 14," on its east side; thence, S. 18 degrees E. 6 chs. and 10 links to a spruce 30 in. in diameter marked "P. Co. No. 15," on its E. side; thence, N. 85 degrees, 30 minutes E. 75 links to middle of Peck's ravine, 1 chain and 51 links to stake marked "P. Co. No. 16," with mound of rocks; thence, S. 24 degrees E. along E. side of Peck's ravine, 9 chs. and 82 links to stake marked "P. Co. No. 17," with mound of rocks, beside a pine tree 3 in. in diameter; thence, N. 77 degrees, E. 1 chain and 52 links crossing croppings of ledge, 4 chains and 54 links to stake marked "P. Co. No. 18," beside a pine tree 4 in. in diameter; thence, N. 14 degrees, W. along western slope 19 chains and 20 links to Sec. line between Sec's 12 and 13, Tp. 16 N., R. 8 E., 27 chs. to stake marked "P. Co. No. 19," with mound of rocks; thence, S. 74 degrees, W. 44 links to Rough and Ready Ditch, 3 chs. and 3 links to the place of beginning, containing 33 92-100 of an acre of land. The same being known on the 28th day of April, 1871, at the Land Office at Sacramento as

Mineral Entry No. 7, and designated as Lot No. 40 on W. $\frac{1}{2}$ of Sections 12 and 13, and east $\frac{1}{2}$ of Section 11, all in Township 16 North, of Range 8 East, M. D. B. & M., Nevada Mining District, Nevada county, California, together with all ledges, lodes and veins of ore, minerals, metals, gold or silver, and gold or silver bearing rocks or quartz or earth therein or thereon or thereunder.

That continuously for more than thirty years last past the said R. C. Walrath, J. V. Hunter and the plaintiff, Austin Walrath, have been by themselves, their ancestors, predecessors in interest and grantors, in the open and notorious, exclusive and uninterrupted ownership and possession of said land premises herein described, and all ledges, lodes and veins of ore, minerals, metals, gold or silver, and gold or silver-bearing rock, or quartz or earth therein or thereon or thereunder, claiming the same openly, notoriously, exclusively and adversely against the whole world, and have almost constantly, during said period of thirty years, been engaged in mining and working the lodes, ledges and veins of ore, minerals, metals, gold and silver and gold and silver-bearing rock and quartz and earth on and in said land and premises, and extracting therefrom gold and silver.

That said R. C. Walrath, J. V. Hunter and the plaintiff, Austin Walrath, have by themselves, their predecessors in interest and grantors continuously paid, during the thirty years last past, all the State, county and municipal taxes which have been levied or assessed against said land or premises, or said property, and have erected thereon mills for crushing

ore taken out of said land, hoisting works and houses, and have sunk inclines and shafts thereon, and run drifts and tunnels therein, all for the purpose of removing from said land the ore, gold and silver-bearing quartz rock and earth, and extracting therefrom the pure gold and silver, and have expended, in making such improvements, over the sum of \$3,000,000.00.

That the defendants, within the two years last past, have, without the knowledge or consent of the said R. C. Walrath, J. V. Hunter and Austin Walrath, the plaintiff, and without the knowledge or consent of either or any of them, and without right or title, run a drift, tunnel or incline from the mine of the defendant, The Champion Mining Company (which adjoins said above described land and premises on the north) into and upon the land and premises above described, for a distance of more than 158 feet, and have extracted from said ledges, lodes and veins in and upon said land and premises above described, large quantities of ore, gold and silver bearing quartz, rock and earth of the full value of \$300,000, and have removed said ore, gold and silver bearing quartz and rock and earth, the property in common of said R. C. Walrath, J. V. Hunter and Austin Walrath, from said land and premises above described, and converted the same to their own use, to the damage of the said R. C. Walrath, J. V. Hunter and Austin Walrath, the plaintiff, in the full sum of \$300,000.

That the defendants are now extracting ore and gold bearing quartz, and rock and earth from said ledges, lodes and veins, and from said land and prem-

ises above described in common, of said R. C. Walrath, J. V. Hunter and Austin Walrath, and threatens to continue so to do, to the irreparable injury of the said owners in common thereof.

That said defendants have not, nor has either, or any of them, ever had any right, title or interest, or property in or to said land or premises, or in or to either or any of the ledges, lodes or veins of ore, or gold or silver bearing quartz, or rock, or earth therein, or thereon or thereunder.

That said R. C. Walrath, and J. V. Hunter, immediately prior to the commencement of the above-entitled action, sold, assigned, transferred, and set over to said Austin Walrath, the plaintiff, all their right, title, interest and property in and to the cause of action herein set out against the defendants, and to the whole thereof, and the said plaintiff is now the owner and holder thereof.

That neither the said R. C. Walrath, J. V. Hunter, nor the plaintiff, Austin Walrath had any knowledge of any of the wrongful acts of defendants herein before recited, until about January, 1892.

Wherefore, plaintiff prays the judgment and decree of this court, that the plaintiff do have and recover from the defendants the sum of \$300,000, that the defendants, and each of them, their agents, servants, employees, and representatives be enjoined and restrained from entering into or upon the land hereinbefore described, and from working or mining therein, thereon, or thereunder, and from extracting, removing, mining, or working any of the ledges, lodes or veins of ore, gold bearing quartz, rock or earth, and from

in any way interfering, meddling, mining, extracting, or removing any ledge, lode or vein of mineral, metal, gold bearing quartz, rock or earth in or upon, or under said land, or premises, and for such other relief as may seem to the Court just and equitable, and for costs of suit.

SMITH & MURASKY,
Attorneys for Plaintiff.

STATE OF CALIFORNIA,
City and County of San Francisco. } ss.

Austin Walrath, being duly sworn, deposes and says that he is the plaintiff in the above-entitled action; that he has heard read the above and foregoing complaint, and knows the contents thereof; that the same is true of his own knowledge, except as to the matters which are therein stated on his information or belief, and as to those matters that he believes to be true.

AUSTIN WALRATH.

Subscribed and sworn to before me this 21st day of May, 1892.

(Seal)

LEE D. CRAIG,

Notary Public, City and County of San Francisco, State of California.

VII.

The said suit is one arising under the laws of the United States, and in this behalf petitioner alleges and shows to this honorable Court as follows:

1.

That plaintiff and his co-tenants claim title to and assert ownership of that certain mine commonly called the "Providence Mine," and being the premises described in the complaint.

That the title and ownership of said mine so claimed and asserted by said plaintiff to said mining ground is derived wholly from the United States through a patent issued by the Government of the United States to the Providence Gold and Silver Mining Company, granted to plaintiff under and by virtue of an Act of Congress, approved July 26, 1866, entitled "An Act granting the right of way to ditch and canal owners over the public lands."

The following is a true copy of said Patent:

No. 1.

General Land Office,
Number 213.

Mineral Certificate,
Number 7

UNITED STATES OF AMERICA

TO

PROVIDENCE GOLD AND SILVER MINING CO.

To all to whom these presents shall come, Greeting:

WHEREAS, In pursuance of the Act of Congress, approved July 26, 1866, granting the right of way to ditch and canal owners over the public lands, and for other purposes, there have been deposited in the General Land Office of the United States the plat and field notes of survey of the claim of the Providence Gold and Silver Mining Company, for thirty-one hundred (3100) feet of the Providence ledge, vein or lode, accompanied by the certificate of the Register of the Land Office at Sacramento, in the State of California, whereby it appears that in pursuance of said Act of Congress, the said Providence Gold and Silver Mining Company did, on the 6th day of December, A. D. 1870,

enter and pay for said claim, being Mineral Entry Number 7, in the series of said office, designated as Lot No. 40, situate in the west half of Section Twelve (12) and Thirteen (13) and east of Section Eleven (11) in Township Sixteen (16) north, of Range Eight (8) east, Mt. D. M., in the Nevada Mining District, in the County of Nevada and State of California, in the district of lands subject to sale at Sacramento, embracing thirty-one hundred (3100) linear feet of the Providence ledge, vein or lode, bearing gold, with surface ground as hereinafter described, and according to the returns on file in the General Land Office, bounded, described and platted as follows, with Mag. Var. at (18) degrees East, to-wit:

Beginning at an oak tree thirty-six (36) inches in diameter marked "P. Co. No. 1," on its east side, which stands on the out croppings of the Providence quartz ledge or lode, and on the west side of Quigley's orchard; thence, north 39 deg. west, descending 4 chains to stake marked "P. Co. No. 2," with mound of rocks; thence, north fifty-eight degrees east along face of hill 9 chs. and 10 links to fallen oak marked "P. Co. No. 3," 16 chs. to stake marked "P. Co. No. 7," with mound of rocks; thence, north 33 degrees, thirty minutes west, descending one (1) chain and fifty links to south bank of Deer creek, three chains to middle of channel, three chains and eighty (80) links to large rock on north side of said creek; thence, south seventy-one degrees west along north side of said creek 4 chs and ninety links to an oak tree six (6) inches in diameter blazed and marked "P. Co. No. 9;" thence, south twenty-six (26) degrees, thirty minutes

east one chain to middle of creek, two chains to top of large boulder on south bank of Deer creek from which a maple four (4) inches in diameter bears south 30 degrees east at the distance of 90 links, thence south seventy-three (73) degrees west along south side of Deer creek eight chains and 40 links to a point from which the mouth of the tunnel bears south ten (10) degrees east at the distance of 20 links 9 chains and 80 links to top of boulder eight feet in diameter in bed of said creek; thence, south 43 degrees west along bed of said creek one (1) chain and ninety links to section line between Sections eleven and twelve of Township 16 north, of Range 8 east five (5) chains and fifty links to a point from which the mill standing on the east side of the mouth of Peck's ravine bears south 8 degrees east at the distance of 50 links 10 chs. and 70 links to a stake marked "P. Co. No. 12" with mound of rocks at foot of a point of rocks; thence south 38 degrees 30 minutes, east along face of hill 9 chs. and 80 links to stake marked "P. Co. No. 13" with mound of rocks at the corner common to Sections (11) and (12), (13) and (14) of Township 16 north, of Range 8 east, Mount Diablo Meridian, from which a spruce tree 36 inches in diameter bears north 34 west at the distance of 70 links; thence south 33 degrees east along face of hill 5 chs. and 95 links to a spruce tree 40 inches in diameter marked "P. Co. No. 14" on its east side; thence south 18 degrees east 6 chs. and 10 links to a spruce tree 30 inches in diameter marked "P. Co. No. 15" on its east side; thence north 85 degrees 30 minutes east 75 links to middle of Peck's ravine one (1) chain and (51) links

to stake marked "P. Co. No. 16" with mound of rocks; thence south 24 degrees east along east side of Peck's ravine 9 chains and 82 links to stake marked "P. Co. No. 17" with mound of rocks, beside a pine tree (3) inches in diameter; thence north 77 degrees east one chain and 52 links crossing croppings of ledge 4 chs. and 54 links to stake marked "P. Co. No. 18" beside a pine tree 4 inches in diameter; thence north 14 degrees west along western slope nineteen chains and 20 links to section line between Sections twelve (12) and (13) T. 16 N., R. 8 E., 27 chains to stake "P. Co. No. 19" with mound of rocks; thence south 74 degrees west 44 links to Rough & Ready ditch 3 chs. and 3 links to the place of beginning, containing thirty-three (33) acres and ninety-two hundredths 92-100 of an acre of land more or less as represented on the following plat.

It being the intent and meaning of these presents to convey unto the said Providence Gold and Silver Mining Co., and to their successors and assigns, the said vein or lode in its entire width, for the distance of thirty-one hundred (3100) linear feet along the course thereof, being (2440) feet in a southerly direction and six hundred and sixty (660) feet in a northerly direction from said oak tree marked "P. Co. No. 1," hereinbefore described, with its dips, angles and variations to any depth, although it may enter the land adjoining, together with the surface ground included in the above described boundaries.

"NOTE.—The Providence Mining Company claims on the quartz ledge 2440 feet in southerly and 660 feet in northerly direction from oak P. Co. No. 1."

Now know ye, that the United States of America, in consideration of the premises and in conformity with said Act of Congress, have given and granted, and by these presents do give and grant unto the said Providence Gold and Silver Mining Co., and to their successors and assigns, the said mineral claim or premises hereinbefore described as Lot No. 40, situate in the west half of section (12) and (13), and east half of section (11), of T. 16 N., R. 8 E., Mt. Do. Mer., with the right to follow said Providence ledge, vein or lode to the distance of (3100) linear feet, with its dips, angles and variations, to any depth, although it may enter the land adjoining.

To have and to hold said premises, together with all the rights, privileges, immunities and appurtenances of whatsoever nature, thereunto belonging unto the said Providence Gold and Silver Mining Company and to their successors and assigns forever. Subject, nevertheless, to the following conditions and stipulations:

First—That the grant hereby made is restricted to one vein, ledge or lode, with surface ground hereinbefore described: Designated as Lot No. 40, situate in Section 11, 12 and 13, Tp. 16 N., R. 8 E., Mt. Do. Mer, to-wit: to the Providence ledge, vein or lode upon which the required amount has been expended in labor and improvements, and that any other vein or lode should such exist within the above-described premises, shall be and hereby is expressly excepted and excluded from these presents.

Second—That the premises hereby conveyed may be entered by the proprietor of any other vein or lode

or quartz, or other rock in place of bearing gold, silver, cinnibar or copper, which has been or may be patented to him by the United States; should the same be found to penetrate or intersect the mineral claim or premises hereinbefore described, for the purpose of extracting and removing the ore from such vein or lode, its dips, angles and variations.

Third—That in the absence of necessary legislation by Congress, the Legislature of the State of California may provide rules for working the mine hereby granted, involving easements, drainage and other necessary means to its complete development.

IN TESTIMONY WHEREOF, I, Ulysses S. Grant, President of the United States of America, have caused the letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the City of Washington, the 28th day of April, in the year of our Lord one thousand eight hundred and seventy-one, and of the Independence of the United States the ninety-fifth.

By the President, U. S. GRANT.

(Seal.)

B. J. PARRISH, Secretary.

I. N. GRANGER,

Recorder of the General Land Office.

Recorded Vol. 2, pages 542 to 548.

Recorded at the request of T. C. Dingley, Augst. 29, 1871, at 30 min. past 5 o'clock P. M.

M. CANNON,

Recorder.

Attached to this petition is a map or plat which is marked "Exhibit A," and which said map or plat is hereby referred to and made a part of this petition.

The ground described in said complaint and in said patent is correctly delineated and shown upon said plat, "Exhibit A," in red colors, marked "Providence."

Traversing said Providence ground is a lode or vein of quartz, the location of which, with reference to its outcrop and general direction on the course of the vein, is correctly delineated on said map or plat by a dotted red line marked "A—A."

Said lode or vein of quartz is the same described in said patent as the "Providence Ledge, Vein or Lode."

2.

That at all the times mentioned in the complaint in this action the defendant, Champion Mining Company, petitioner herein, was, and now is the owner, and in possession of certain mines and mining ground designated on said plat as "Champion Ground," and shown thereon in green colors, and designated on said plat as "New Year's Relocation" and "New Year's Extension."

Said ground is and for many years last past has been claimed by and under mineral location made on the public lands of the United States by petitioner, its agents and grantors.

The following are copies of the mineral locations under which petitioner claims and has claimed said ground:

John Gantner, }
Mining Location. } *Notice of Location.*

Known All Men by These Presents:—That I, John Gantner, a citizen of the United States of America, residing in the City and County of San Francisco, State of California, have this day, under the provisions of an Act of Congress, passed May 10th, 1872, claimed and located that certain quartz vein, lode or ledge, known as the New Year's Mine, containing fifteen hundred (1500) feet, and bounded and described as follows, to-wit: Commencing at a point on the northerly bank of Deer creek in Nevada Township, Nevada County, State of California, in the northwest quarter of the southwest quarter of Section 12, Township 16 North, Range 8 east, Mount Diablo Base and Meridian three hundred (300) feet more or less, south of the northerly line of the northwest quarter of the southwest quarter of Section 12, aforesaid, and also one hundred (100) feet, more or less, east of the north and south line, dividing the Sections 11 and 12 of Township 16 north, Range 8 east, also situated four hundred (400) feet, more or less, west from the Soggs or Nevada quartz ledge or incline shaft, and, furthermore at a stake (marked N. Y. M. Co. No. 1); thence running in a direction which is about north northwesterly, one thousand five hundred (1500) feet, to a stake (marked N. Y. M. Co. No. 2), with all its dips, spurs, angles and variations. Also two hundred (200) feet of surface ground on each side of said quartz ledge or vein, for the convenient working of the same, and running north northwesterly along the course of said vein, lode of ledge. And also

a dumpage ground in Deer creek, four hundred (400) feet by two hundred (200) feet, commencing at the Stake No. 1 above mentioned; thence running westerly two hundred (200) feet; thence running southerly at right angles two hundred (200) feet; thence running easterly at right angles four hundred (400) feet; thence running northerly at right angles two hundred (200) feet, and thence westerly at right angles two hundred (200) feet to the point of beginning; two copies having been posted on the above-described claim.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this thirtieth day of December, A. D. eighteen hundred and seventy six (1876).

JOHN GANTNER. (Seal.)

Recorded at request of J. F. Schulthess, January 2nd, 1877, at 53 minutes past 10 o'clock A. M., in Book 7, pages 5 and 6, Records Nevada county.

J. J. ROGERS,

Recorder.

Recorded at request of Leop. Garthe, February 15th, 1877, at 45 minutes past 4 o'clock P. M., in Book No. 7 of Mining Records of Nevada county, Cal., on pages 42 and 43.

J. J. ROGERS,

Recorder.

Notice of Relocation.

The undersigned hereby relocates 500 feet of this mineral ledge heretofore and now known as the *New Year's Mine*, which was originally located, as evidenced by the notice of location, recorded Jan. 2d, 1877, in Book

7, pages 5 and 6, and recorded Feb. 15th, 1877, in Book 7, pages 42 and 43, of Mining Notices of Nevada County Records. This relocation is made to correct errors of description of said original notice and to conform the description to the actual boundaries of said mine as marked upon the ground, and to the requirements of law. This relocation is made by me at the request of, and for the use and benefit of The Champion Mining Company, a corporation of which I am the Superintendent, which corporation is now, and for 7 years past has been the owner and in possession of the ground and mine hereby relocated, and this notice is intended as an amendment merely of said original notice. The lode line of this claim, as located originally and which I hereby relocate, is described as follows: Commencing at this notice, which is posted at the mouth of the New Years Tunnel, which is 150 feet westerly from the southwesterly corner of the Merrifield Chlorination Works, running thence N. 11 degs. 45 min. W. 1440 feet, more or less, to the northerly end of said original location of said ledge, which end is marked by a painted post marked N. Y. Co. No. 2, which post is about S. 33 degs. 30 min. W. 412 feet, more or less, from the $\frac{1}{4}$ section post between Sections 11 and 12, T. 6 N., R. 8 E., M. D. B. & M., and running from said mouth of said tunnel S. 11 degs. 45 min. E. 60 feet, to a point on the northerly bank of Deer creek, the original point being now covered by a dump, which point is the southern end of said ledge as originally located. The surface ground for the working of said lode so originally located, and which I hereby relocate, is described as fol-

lows: Commencing at said point on the bank of Deer creek, the southerly end of said lode location running thence about S. 78 degrees 15 minutes W. at right angles with said lode line 300 feet to a point on the easterly boundary line between the Ural Patented Mine Lot No. 75, and this mine, which line is and for over 5 years past has been marked "Ural" and "New Years Champion," which point is about 165 feet, more or less, N. 6 degrees 20 minutes W. from Ural Post No. 2, of said Lot No. 75; thence north 6 degrees 20 minutes W. along said line marked by said row of stakes 1500 feet, more or less, to a painted stake; thence N. 78 degrees 15 minutes E. 140 feet, more or less, to said post at said northern end of the lode line above described; thence on the same course 180 feet, more or less, to a painted stake, and the western boundary line of the Nevada Quartz Mine, patented, designated as Mineral Lot No. 46, and the eastern boundary of said New Years Mine, which line is and for 5 years past has been marked by a row of painted stakes set 50 feet apart along said line marked "New Year's Champion" and "Nevada;" thence S. 15 E. along said line, 1500 feet to a point in Deer creek, which cannot be marked; thence S. 78 degrees 15 minutes W., and at right angles with said lode line 278 feet, more or less, to the point of commencement. And whereas, the southeast corner of this claim as relocated, and as heretofore located for surface ground thereof, conflicts now with the surface ground of the patented McCauley Placer and Walrath Quartz Mines, and the Merrifield Chlorination works, now, therefore, so much of the surface ground of this claim as relocated,

and as heretofore located, as now conflicts, is hereby abandoned, the surface ground so abandoned comprises all of the grounds now covered by said McCauley and Walrath mine, and by said chlorination works, and is described as follows, to-wit: Commencing at the southeasterly corner of this claim, as above described, and running thence N. 15 deg. W. 120 feet, more or less, to the edge of the road; thence S. 75 deg. W. 112 feet, more or less, to fence west of said chlorination works; thence S. 15 deg. E. 110 feet, more or less, to the southern end line of this claim; thence N. 78 deg. 15 min. E. 112 feet, more or less, to said southeasterly corner. This claim is located by me, a citizen of the United States, under the Mining Laws now in force.

JOHN VINCENT,

Individually and as Superintendent of The
Champion Mining Company, a Corporation.

Dated Nov. 15, 1884.

Recorded at the request of John Vincent, Nov. 17,
1884, at 25 min. past 10 o'clock A. M.

JOHN A. RAPP,

Recorder.

Book No. 9, page 711-13, Mining Reeds. Nevada Co.

Know All Men by These Presents: That we, J. J. Rey, G. C. Hurlbut, Henry Steinegger, of the City and County of San Francisco, and George Fletcher and C. C. Townsend, of Grass Valley township, Nevada county, State of California, all citizens of the United States of America, and being the Board of Directors of The Champion Mining Company (incorporated in December, 1876), whose principal place of business is in the City and County of San Francisco, State aforesaid,

and whose works are located in Nevada County Mining District, Nevada township, Nevada county, State of California, have this day, for the benefit of the above mentioned Champion Mining Company, claimed and located the following described quartz lode or vein, the same being the southerly extension of the New Year's lode and vein.

Commencing at the southerly terminus of the New Year's Vein Location, and at a stake (marked N. Y. M. Co. No. 1) standing on the northerly bank of Deer creek, fifty feet, more or less, from high water mark, and situate in the NW. $\frac{1}{4}$ of the NW. $\frac{1}{4}$ of SW. $\frac{1}{4}$ of Section 12, Township 16 north, Range 8 east, Mount Diablo Base and Meridian, and also four hundred (400) feet, more or less, west of the incline shaft of the Nevada or Soggs mine, thence running in a direction more or less southeasterly two hundred (200) feet to a place in the bed of Deer creek, near its center, which can not be marked permanently, as per dotted line on the annexed diagram. With all dips, spurs, angles, and variations.

The necessary surface ground being the dumpage ground and millsite of the New Year's Mine, as recorded January 2d, 1877, in Book 7, pages 5 and 6, Nevada County Records, the same being four hundred (400) feet in length by two hundred (200) feet in width as shown in pink color on the annexed diagram.

And we give hereby notice that we have merged the above described extension into the New Year Mine, and that we shall work the whole of said mining property according to the mining laws of the United States, according to the local customs of Nevada Township.

Two copies of this notice of location having been posted conspicuously on said claim.

IN WITNESS WHEREOF, we have hereunto set our hands and seals, partly in the City and County of San Francisco, and partly in Grass Valley Township, Nevada county, State of California, this twenty-ninth day of September, A. D. one thousand eight hundred and seventy-seven (1877).

J. J. RAY, President, (Seal.)

G. C. HURLBUT, Vice-President, (Seal.)

HENRY STEINEGGER, Treasurer, (Seal.)

GEORGE FLETCHER, (Seal.)

C. C. TOWNSEND, (Seal.)

M. GUMPEL, (Seal.)

Witnesses to location:

John Fred Schulthess,

H. Kirchberger,

A. Spiker.

Here follows diagram.

[Endorsed]: Notice of Location, New Year's Extension. Dated Sept. 29, 1877. Recorded at request of John Blasauf, October 1st, 1877, at 45 min. past 2 o'clock P. M., in Book No. 7, of Mining Records of Nevada county, Cal., pages 230 and 231. J. J. Rogers, Recorder. By J. F. Beckett, Dep. \$3.00.

Notice of Relocation.

The undersigned hereby relocates 200 feet of this mineral lode heretofore and now known as the *New Year's Extension*, which was originally located as evidenced by the notice recorded Oct. 1st, 1877, in Book

7, pages 230 and 231 of Mining Notices Nevada County Records. This relocation is made to correct errors of description of said original notice, and to conform said description to the actual boundaries of said mine, and to the requirements of law. This relocation is made by me at the request of and for the use and benefit of The Champion Mining Company, a corporation, of which I am Superintendent, which corporation is now, and for 7 years past has been the owner and in possession of the ground and lode hereby relocated, and this notice is intended as an amendment merely of said original notice. The lode line of this claim, as originally located, and which I hereby relocate, is described as follows: Commencing at a point on the northerly bank of Deer creek, which point is 60 feet S. 11 degrees 45 minutes E. of the mouth of the New Year's Tunnel, and running thence along the line of lode towards the NE. corner of the Providence Mill, about S. 46 degrees 15 minutes E. 200 feet, more or less, to a point and stake on the northerly line of the Providence mine, patented, designated as Mineral Lot No. 40, for the south end of said lode line. The surface ground for the working of said lode so originally located, and which I hereby relocate, is described as follows: Commencing at said point on the northerly bank of Deer creek, the northerly end of this lode, and running thence S. 78 degrees 15 minutes W. along the southern end line of the New Year's Mine 300 feet to a point on the eastern boundary line of the Ural Patented Mine Mineral Lot No. 75, 165 feet, more or less, N. 6 degrees 20 minutes W. from Post No. 2 of said

Lot No. 75, which line is marked by a row of painted stakes set 50 feet apart marked "Ural" and "New Year's Champion;" thence parallel with said lode line and about S. 46 degrees 15 minutes E. 200 feet to a point in Deer creek, which cannot be marked; thence N. 78 degrees 15 minutes E., crossing said lode line at 300 feet, 405 feet to a point 105 feet, more or less, west of the western boundary line extended of the Nevada Mine Patented Mineral Lot No. 46; thence N. 15 degrees W. 175 feet more or less, to a point in Deer creek which cannot be marked; thence S. 78 deg. 15 min. W. along the southern end line of the New Year's Mine 150 feet, more or less, to the place of commencement. Said claim is marked on the ground as well as can be done. And whereas, part of this claim, as originally described and as hereby relocated, conflicts with the rights granted by the letters patent of said Providence mine, said lot No. 40, now, therefore, so much of this claim, both for lode and surface ground, as originally conflicted, or now conflicts with any portion of the surface or lode claims or rights granted by said patent, is and are hereby abandoned, which portion of this claim so abandoned is described as follows, to-wit: All that portion of the above described New Year's Extension claim for surface and lode which lies south of the northern boundary line of said Providence mine, which runs N. 43 deg. 10 min. E. across the southeastern corner of this claim. This claim is located by me, as aforesaid, a citizen of the United States, under the mining laws of the United States, and it lies in

the southeastern quarter of Section 11, T. 16 N., R. 8 E., M. D. B. and M., Nevada county, Cal.

Dated Nov. 15, 1884.

JOHN VINCENT,

Individually and as Superintendent of The
Champion Mining Company, a Corporation.

Recorded at request of John Vincent, Nov. 17, 1884,
at 26 mins. past 10 o'clock A. M.

JOHN A. RAPP,

Recorder.

STATE OF CALIFORNIA, }
County of Nevada. } ss.

I, John A. Rapp, County Recorder in and for the
County of Nevada, State of California, do hereby cer-
tify the within and annexed to be a full, true and cor-
rect copy of an original document, now of record in
this my office, in Book 9, page 713, Mining Records
Nevada County, Cal.

Witness my hand and official seal this 16th day of
Sept., 1886.

(Seal.)

JOHN A. RAPP,

County Recorder, Nevada County, Cal.

Petitioner further alleges that it is and at all times
mentioned in the complaint was also the owner by
mesne conveyances from United States Mining Patent
of all that mine and mining claim designated on said
plat marked "Exhibit A" as the Merrifield.

3.

Traversing said ground of petitioner through that
portion thereof designated on said plat as "New Year's
Relocation" and "New Year's Extension" and passing

into and through said Providence ground is a lode or vein of quartz, the location of which with reference to its apex and general direction on the course of the vein is correctly delineated on said map or plat by a dotted black line marked B-B-B.

4.

That from a point between the boundaries of petitioner's ground, as shown on the plat marked Chn. Hoisting Works, and on the lode designated on the plat by the dotted black line B—B—B, petitioner has sunk a shaft 1000 feet in depth in the direction as shown upon the plat, the shaft dipping easterly at various angles and following the vein on its downward course into the earth.

That 10 levels have been driven northerly and southerly from said shaft at distances down the shaft 100 feet from the top, and every hundred feet thereafter, as shown on the plat. Said levels are driven upon the course of and along the vein northerly and southerly, each and every one of said levels being wholly within the boundaries of petitioner's surface ground and within the boundaries of vertical planes passed through said surface lines and extended into the earth.

That said shaft and said levels do not at any point penetrate any portion of the ground claimed and described by the plaintiff in his complaint, nor do they, or any portion of the workings, or any work constructed by petitioner at any place, penetrate any vertical plane passed through any surface line of the ground described in said complaint of plaintiff, or in said patent.

5.

The plaintiff claims, and will claim at the trial of this action, that although under and by virtue of the Act of Congress of July 26, 1866, under which he derives title to said Providence mine, he acquired the ownership of but one lode, designated on said plat by the line A—A, and with a lateral right to follow that one lode only, with its dips, angles and variations, to any depth, although it may enter the land adjoining, yet, under the provisions of an Act of Congress of the United States passed May 10, 1872, entitled "An Act to promote the development of the mining resources of the United States," he has become, and is now, the owner of all veins, lodes and ledges throughout their entire depth, the top or apex of which lies inside of his surface lines, extended downward vertically.

And said plaintiff will particularly claim that the ledge, vein or lode passing through the ground of petitioner and plaintiff, designated and shown upon the plat or map, "Exhibit A," and marked thereon by the black dotted line B—B—B, is a vein or lode having its apex within the surface lines of said Providence mine, and that as to that lode or vein, under and by virtue of the provisions of said Act of Congress of May 10, 1872, he is the owner thereof, and is entitled, under the provisions of said Act of Congress, to follow said vein upon its dips or inclination downward, and extract the ore therefrom at all points below the earth's surface lying south of a vertical plane drawn through the line C—C—C, and said line produced indefinitely.

And plaintiff claims, and at the trial of said action will claim, that the trespasses, wrongs and injuries complained of in said complaint were committed by this petitioner by means of its underground workings, levels, shafts and drifts within vertical planes drawn through the lines C—C—C and C—C', and said plaintiff claims that said petitioner has extended its various levels from the shaft southerly, so that the same has penetrated and passes through a vertical plane drawn through said line C—C—C, and has been and is now extracting gold-bearing ore underneath the earth's surface south of said vertical plane, and north of the vertical plane drawn through the line C—C'.

And plaintiff does now and at the trial of said action will in good faith contend that the true construction of said Acts of Congress, to-wit: the Act of July 26, 1866, and of May 10, 1872, will and does grant to him all that portion of the ledge, vein or lode designated by its surface outcrop or apex upon the plat hereto annexed by the dotted black line B—B—B, which may be found below the earth's surface south of a vertical plane drawn through the line C—C—C, extended indefinitely.

The petitioner on its part in good faith claims, and at the trial of said action will claim, that the true construction of said Acts of Congress, limits the lateral right of said plaintiff to vertical plane drawn through line D—D—D. That petitioner having also the apex and outcrop of said vein within the lines of its ground, "New Year's Extension" and "New Year's Relocation," said petitioner has the right under the true construction of said Acts of Congress to extract

all the ore found in said vein, and encountered north of the vertical plane drawn through the line D-D-D, and in the exercise of such right petitioner is under the true construction of said Acts of Congress authorized to penetrate and pass through the vertical plane drawn through the line C-C-C, and to extract all the gold bearing ore found in said vein, which lies between said vertical planes drawn through said lines C-C-C and D-D-D.

VIII.

That petitioner will rely as a part of its defense upon the facts hereinbefore set forth, and that such facts will be established by evidence for petitioner upon the trial of this action.

IX.

Plaintiff hereby offers ample, good and sufficient surety for its entering in the Circuit Court of the United States of America, Ninth Judicial Circuit, in and for the Northern District of California, in which district said action is pending, on the first day of the next session of the said court, and pursuant to the provisions of law and the rules of said court in that behalf, a copy of the record in said action, and for paying all costs that may be awarded by said Circuit Court, if said court shall hold that this suit was wrongfully or improperly removed thereto.

And also for petitioner there appearing and entering special bail in said action, if special bail was originally requisite therein, and for its complying with the provisions of the Acts of Congress regulating the

removal of causes from the State courts to the Circuit Courts of the United States.

And your petitioner prays this Honorable Court to proceed no further herein, except to make an order for the removal of this cause to said Circuit Court, and to accept the said surety and bond, and to cause the record herein to be removed into said Circuit Court of the United States, Ninth Circuit, Northern District of California, and your petitioner will ever pray.

THE CHAMPION MINING COMPANY,
(a Corporation),
By Joseph S. Schuster, President.
By Theo. Wetzel, Secretary.

(Witness the Seal of said Corporation.)

LINDLEY & EICKHOFF,
FRED SEARLS and
GEO. F. HOFFER,

Attorneys for said Petitioner,
212 Sansome St.,
San Francisco, Cal.

STATE OF CALIFORNIA, }
City and County of San Francisco. } ss.

Joseph S. Schuster, being first duly sworn, deposes and says: That he is an officer, to-wit: President of The Champion Mining Company, a corporation, the defendant and petitioner above named; that he has heard read the foregoing petition and knows the contents thereof; that the same is true of his own knowledge except as to matters therein stated on in-

formation and belief, and as to those matters he believes it to be true.

JOSEPH S. SCHUSTER. (Corporate Seal.)

Subscribed and sworn to before me, this 23d day of June, A. D. 1892.

(Notarial Seal.)

LEE D. CRAIG,

Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: 2032. Superior Court, Nevada county, State of California. Austin Walrath, Plaintiff, vs. Champion Mining Company, et al., Defendants. Petition for removal of cause to U. S. Circuit Court. Filed June 24th, 1892. J. L. Morgan, Clerk.

*In the Superior Court, in and for the County of Nevada,
State of California.*

AUSTIN WALRATH,

Plaintiff,

vs.

CHAMPION MINING COMPANY,
(a Corporation),

Defendant.

Bond on Removal.

Known All Men by These Presents: That we, viz: the corporation styled Champion Mining Company as principal and George C. Shaw, of the County of Nevada, State of California, and James A. Northway, of the same place, as sureties, are held and firmly bound unto the plaintiff in the above-entitled action in the penal sum of one thousand dollars for the pay-

ment whereof, well and truly to be made under said Austin Walrath, the said plaintiff, his heirs, representatives and assigns, we bind ourselves, our heirs, representatives and assigns, jointly and severally, firmly by these presents.

Upon condition nevertheless, that whereas the said corporation styled Champion Mining Company has petitioned the Superior Court of, in and for the County of Nevada, State of California, for the removal of a certain case therein pending wherein Austin Walrath is plaintiff and the said corporation, Champion Mining Company, is defendant, to the Circuit Court of the United States, Ninth Circuit, in and for the Northern District of California,

Now, if the petitioner aforesaid shall enter in the said Circuit Court of the United States on the first day of its next session a copy of the record in said suit and shall well and truly pay all costs that may be awarded by said Circuit Court of the United States, if said Court shall hold that said suit was wrongfully or improperly removed thereto, then this obligation shall be void; otherwise in full force and virtue.

IN WITNESS WHEREOF, the said corporation has caused these presents to be duly executed by its President and Secretary, and its Corporate Seal to be hereto affixed and the above bounded sureties have hereunto put their hands and seals this 24th day of June, 1892.

(Corporate Seal.) CHAMPION MINING COMPANY,
By Joseph S. Schuster, President.
By Theo. Wetzel, Secretary.

GEORGE C. SHAW, (Seal.)

J. A. NORTHWAY, (Seal.)

STATE OF CALIFORNIA, }
 County of Nevada. } ss.

George C. Shaw and James A. Northway of said Nevada County, being severally duly sworn, each for himself deposes and says: that he is one of the sureties named in the above undertaking; that he is a resident and householder in the said County of Nevada, State of California, and is worth the sum in said undertaking specified as the penalty thereof over and above all his just debts and liabilities, exclusive of property exempt from execution.

GEORGE C. SHAW,
 JAMES A. NORTHWAY.

Subscribed and sworn to before me, this 24th day of June, 1892.

(Notarial Seal.)

FRED SEARLS,
 Notary Public, Nevada County, California.

[Endorsed]: Filed June 24th, 1892. J. L. Morgan,
 Clerk.

*In the Superior Court, in and for the County of Nevada,
 State of California.*

AUSTIN WALRATH.

Plaintiff,

vs.

CHAMPION MINING COMPANY,
 (a Corporation),

Defendant.

Order Removing Cause to Circuit Court.

On reading the petition of said defendant, filed in that behalf herein, and it appearing therefrom that

good cause exists therefor; and it further appearing that the security tendered by said defendant together with said petition is satisfactory and as required by law,

It is ordered that said security be, and the same is hereby accepted, approved and directed to be filed herein. That thereupon the above-entitled suit be removed to the Circuit Court of the United States of the Ninth Circuit, in and for the Northern District of the State of California, and that all proceedings on the part of plaintiff in said suit in this court be stayed until the further order of this Court.

Dated June 24th, 1892.

JOHN CALDWELL,
Superior Judge.

[Endorsed]: Filed June 24th, 1892. J. L. Morgan,
Clerk.

*In the Superior Court, in and for Nevada County, State
of California.*

AUSTIN WALRATH,	}	STATE OF CALIFORNIA } County of Nevada. } ss.
Plaintiff,		
vs.		
CHAMPION MINING COMPANY,		
ET ALS.,		
Defendants.		

Certificate of Clerk as to Record.

I, J. L. Morgan, County Clerk of the County of Nevada, State of California, and ex-officio Clerk of the Superior Court of said county, do hereby certify the

foregoing to be a full, true and correct copy of the record in the above and within entitled action of Austin Walrath, plaintiff, vs. Champion Mining Company et al., defendants, now on file in my office.

Witness my hand and the seal of said court this 24th day of June, 1891.

(Seal.)

J. L. MORGAN,

County Clerk and *ex-officio* Clerk Superior Court,
Nevada county, California.

[Endorsed]: No. 11,639. U. S. Circuit Court, Nor. Dist. of California. Austin Walrath, Plaintiff, vs. Champion Mining Company, et als., Defendants. Certified Copy of the Record Transferred. Filed June 25, 1892. L. S. B. Sawyer, Clerk.

*In the Circuit Court of the United States, Ninth Circuit,
Northern District of California.*

AUSTIN WALRATH,

Plaintiff,

vs.

THE CHAMPION MINING COMPANY
(a Corporation), ET AL.,

Defendants.

No. 11,639.

**Demurrer of Defendant Champion Mining
Company to Complaint.**

Now comes the defendant, Champion Mining Company (a corporation), and demurs to the complaint of plaintiff herein on the following grounds:

1. Said complaint does not state facts sufficient to constitute a cause of action.

2. Two causes of action are improperly united in said complaint, to-wit: A cause of action at law for damages for trespass to the premises described in the complaint, and a cause of action in equity for an injunction to restrain the commission of threatened trespasses.

3. Said complaint seeks to obtain relief at law by way of a judgment of damages for trespass, and relief in equity by way of an order of injunction restraining threatened trespasses.

4. That said plaintiff has not in and by the said complaint made or stated such a case as does or ought to entitle him to any further or other answer to the said complaint or any of the matters therein contained.

Wherefore, this defendant prays to be hence dismissed with his reasonable costs in this behalf sustained.

LINDLEY & EICKHOFF,
GEO. F. HOEFFER,
FRED SEARLES,
EDWARD LYNCH,

Attorneys for Defendant Champion Mining
Company.

I hereby certify that the foregoing demurrer is, in my opinion, well founded in point of law.

CURTIS H. LINDLEY,
Of Counsel for Defendant Champion Mining
Company.

STATE OF CALIFORNIA,
City and County of San Francisco, } ss.
Northern District of California. }

Joseph S. Schuster, being duly sworn, deposes and says: I am the President of The Champion Mining Company (a corporation), defendant herein. The foregoing demurrer is not interposed for delay.

JOSEPH S. SCHUSTER.

Subscribed and sworn to before me this 5th day of Aug., 1892.

(Seal.)

LEE D. CRAIG,

Notary Public in and for the City and County
of San Francisco, State of California.

[Endorsed]: Service of the within Demurrer and receipt of copy is acknowledged, this 6th day of Aug., 1892. Smith & Murasky, Attorneys for Plaintiff. Filed August 6, 1892. L. S. B. Sawyer, Clerk.

At a stated term, to-wit: the February Term, A. D. 1893, of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Northern District of California, held in the courtroom in the City and County of San Francisco, on Monday, the 13th day of February, in the year of our Lord one thousand eight hundred and ninety-three.

Present: The Honorable JOSEPH McKENNA, Circuit Judge.

A. WALRATH,

vs.

CHAMPION MINING COMPANY, ET AL.

No. 11,639.

Order Sustaining Demurrer to Bill of Complaint.

The demurrer of respondent, The Champion Mining Company, to the bill of complaint herein, heretofore argued and submitted to the Court for consideration and decision, having been duly considered, it is ordered that said demurrer be and the same hereby is sustained, with leave to the complainant to amend his bill of complaint on or before the next Rule day.

*In the Circuit Court of the United States in and for the
Ninth Circuit, Northern District of California.*

AUSTIN WALRATH,

Plaintiff,

vs.

THE CHAMPION MINING COMPANY (a
Corporation) and JOHN DOE and
RICHARD ROE and PETER STYLES,
whose real names are unknown,
Defendants.

Amended Complaint.

Now comes the plaintiff in the above-entitled action, by this, his amended complaint, leave of Court being first had and obtained therefor, and for a cause of action against the defendants alleges:

That the real names of the defendants John Doe, Richard Roe and Peter Styles, three of the defendants

in the above-entitled action, are unknown to the plaintiff aforesaid, and plaintiff prays that when the true names of said defendants, sued herein as John Doe, Richard Roe and Peter Styles, become known, such true names may be inserted herein with proper and apt words to charge them.

That The Champion Mining Company, one of the defendants in the above-entitled action, is now and at all the times herein mentioned has been a corporation duly formed, organized and existing under the laws of the State of California.

That R. C. Walrath, J. V. Hunter and Austin Walrath, the said plaintiff, are now and continuously for more than eighteen years last past have been the owners in common, in the possession in common, and entitled to the possession in common of all that certain piece or parcel of land situate, lying and being on the south side of Deer creek, about one mile below Nevada city, in the County of Nevada, State of California, and bounded and described as follows, with magnetic variations at 18 degrees east, to-wit: Beginning at oak tree 37 in. in diameter marked P. Co. No. 1 on E. side, which stands on the croppings of the Providence quartz ledge, on the W. side of Dingley's orchard; thence N. 39 degrees W. descending 4 chs. to stake marked "P. Co. No. 2," with mound of rocks. thence N. 58 deg. E. along face of hill 9 chs. and 10 links to fallen oak marked "P. Co. No. 3," 16 chs. to stake marked "P. Co. No. 7," with mound of rocks; thence N. 33 degrees 30 minutes W. descending 1 chain and 50 links to south bank of Deer creek to middle of channel, 3 chs. and 80 links to large rock on N. side

of said creek; thence south 71 degrees W. along N. side of said creek 4 chs. and 90 links to an oak tree, 6 in. in diameter blazed and marked "P. Co. No. 9," thence south 26 degrees and 30 minutes E. 1 chain to middle of Deer creek, 2 chains to top of large boulder on S. bank of Deer creek, from which a maple 4 in. in diameter bears S. 30 degrees E. at the distance of 90 links; thence S. 73 degrees W. along S. side of Deer creek 8 chs. and 40 links to a point from which the mouth of the tunnel bears S. 10 degrees E. at the distance of 20 links, 9 chs. and 80 links to top of boulder 8 feet in diameter, in bed of said creek; thence south 43 degrees W. along bed of said creek 1 chain and 90 links to section line between Sections 11 and 12 of Township 16 N., R. 8 E., 5 chains and 50 links to a point from which the mill standing on the east side of the mouth of Peck's ravine bears S. 8 degrees E. at the distance of 50 links, 10 chs. and 70 links to stake marked "P. Co. No. 12" with mound of rocks at foot of a point of rocks; thence S. 38 degrees 30 minutes E. along face of hill 9 chs. and 80 links to stake marked "P. Co. No. 13" with mound of rocks at the corner common to Sections 11, 12, 13 and 14 of Township 16 N., R. 8 E., M. D. B. and M., from which a spruce tree 36 in. in diameter bears N. 34 degrees W. at the distance of 70 links; thence S. 33 degrees E. along face of hill 5 chs. and 95 links to a spruce 40 in. in diameter marked "P. Co. No. 14" on its E. side; thence S. 18 degrees E. 6 chains and 10 links to a spruce 30 in. in diameter marked "P. Co. No. 15" on its E. side; thence N. 85 degrees 30 minutes E. 75 links to middle of Peck's ravine 1 chain and 51 links

to stake marked "P. Co. No. 16" with mound of rocks; thence S. 24 degrees E. along E. side of Peck's ravine 9 chs. and 82 links to stake marked "P. Co. No. 17" with mound of rocks beside a pine tree 3 in. in diameter; thence N. 77 degrees E. 1 chain and 52 links crossing cropping of ledge 4 chains and 54 links to a stake marked "P. Co. No. 18" beside a pine tree 4 in. in diameter; thence N. 14 degrees W. along western slope 19 chains and 20 links to section line between Sections 12 and 13, Township 16 N., R. 8 E., 27 chains to stake marked "P. Co. No. 9" with mound of rocks; thence S. 74 degrees, W. 44 links to Rough and Ready ditch, 3 ch. and 3 links, to place of beginning, containing 33 92-100 of an acre of land. The same being known on the 28th day of April 1891, at the land office at Sacramento, as Mineral Entry No. 7, and designated as Lot No. 40 on W. $\frac{1}{2}$ of Sections 12 and 13 and East $\frac{1}{2}$ of Section 17, all in Township 16 North, of Range 8 E., M. D. B. & M., Nevada Mining District, Nevada County, California, together with all ledges, lodes and veins of ore, minerals, metals, gold or silver, and gold or silver-bearing rocks or quartz or earth therein or thereon or thereunder, and of the right to follow laterally any ledge, lode or vein therein, thereon or thereunder, to any depth between vertical plains drawn through the end lines and the prolongation thereof of any such lode, ledge or vein though such lode, ledge or vein may enter the ground adjoining.

That continuously for more than thirty years last past, the said R. C. Walrath, J. V. Hunter, and the plaintiff, Austin Walrath, have been by themselves,

their ancestors, predecessors in interest and grantors in the open and notorious, exclusive and uninterrupted ownership and possession of said land and premises herein described, and of all ledges, lodes and veins of ore, minerals, metals, gold or silver, and gold or silver-bearing rock or quartz or earth therein or thereon or thereunder, claiming the same openly, notoriously, exclusively and adversely against the whole world, and have almost constantly during said period of thirty years been engaged in mining and working the lodes, ledges and veins of ore, minerals, metals, gold and silver, and gold and silver-bearing rock and quartz and earth on and in said land and premises, and between said vertical planes, and in extracting therefrom gold and silver.

That said R. C. Walrath, J. V. Hunter and the plaintiff, Austin Walrath have by themselves, their predecessors in interest and grantors, continuously paid during the thirty years last past all the State county and municipal taxes which have been levied or assessed against said land or premises or said property, and have erected thereon mills for crushing ore taken out of said land, hoisting works and houses, and have sunk inclines and shafts thereon and run drifts and tunnels therein, all for the purpose of removing from said land the ore, gold and silver bearing quartz, rock and earth and extracting therefrom the pure gold and silver, and have expended in making such improvements over the sum of three million (\$3,000,000) dollars.

That the defendants within the three years last past have, without the knowledge or consent of the said R. C. Walrath, J. V. Hunter and Austin Walrath, the

plaintiff, and without the knowledge or consent of either or any of them, and without right or title, run a drift, tunnel or incline from the mine of the defendant, The Champion Mining Company, which adjoins said above described land and premises on the north for a distance of more than 158 feet into and upon the land and premises above described, and between the imaginary vertical planes drawn downward to the center of the earth through the plaintiff's end lines, and the prolongation thereof on what is known as the "Back" or "Ural" ledge, the apex of which said ledge is within the boundaries hereinbefore set out and abuts upon said vertical planes, and have extracted from said Ural or Back ledge between said vertical planes and from the ledges and veins in and upon said land and premises large quantities of ore, gold and silver-bearing quartz, rock and earth of the full value of three hundred thousand (\$300,000) dollars, and have removed said ore, gold and silver-bearing quartz and rock and earth, the property in common of said R. C. Walrath, J. V. Hunter and Austin Walrath, from said land and premises above described, and between said vertical planes and converted the same to their own use, to the irreparable injury of plaintiff.

That the defendants are now extracting ore and gold-bearing quartz and rock and earth from said Ural or "Back" ledge, between said vertical planes and from said ledges, lodes and veins in and upon said land and premises above described, the property in common of said R. C. Walrath, J. V. Hunter and Austin Walrath, and threaten to continue so to do to the irre-

parable injury of the said owners in common thereof, and of this plaintiff.

That said defendants have not, nor has either or any of them, ever had any right, title or interest or property in or to said land or premises, or in or to either or any of the ledges, lodes or veins of ore or gold or silver-bearing quartz or rock or earth therein or thereon, or thereunder, or between said vertical planes.

That said R. C. Walrath and J. V. Hunter immediately prior to the commencement of the above-entitled action, sold, assigned, transferred and set over to said Austin Walrath, the plaintiff, all their right, title, interest and property in and to the cause of action herein set out against the defendants, and to the whole thereof, and the said plaintiff is now the owner and holder thereof.

That neither the said R. C. Walrath, J. V. Hunter, nor the plaintiff Austin Walrath had any knowledge of any of the wrongful acts of defendants hereinbefore recited until about January, 1892.

Wherefore, plaintiff prays the judgment and a decree of this court that the defendants and each of them, their agents, servants, employees, and representatives be enjoined and restrained from entering into and upon the land hereinbefore described, or between said vertical planes, and from working or mining therein or thereon, and from extracting, removing, mining or working any of the ledges, lodes or veins of ore, gold bearing quartz, rock or earth, and from in any way interfering, meddling, mining, extracting or removing any ledge, lode, or vein of mineral, metal, gold-bearing quartz, rock or earth in or upon or under

said land or premises, or between said vertical planes, and for such other relief as may seem to the Court just and equitable, and for costs of suit.

SMITH & MURASKY,
Attorneys for Plaintiff.

STATE OF CALIFORNIA, }
City and County of San Francisco. } ss.

Austin Walrath, being duly sworn, deposes and says: That he is the plaintiff in the above-entitled action; that he has read the above and foregoing amended complaint and knows the contents thereof; that the same is true of his own knowledge, except as to the matters which are therein stated on his information or belief, and as to those matters, that he believes it to be true.

AUSTIN WALRATH.

Subscribed and sworn to this 15th day of February,
A. D. 1893, before me.

(Seal)

LEE D. CRAIG,
Notary Public in and for the City and County
of San Francisco, State of California.

[Endorsed]: Service on the within Amended Complaint admitted by receipt of copy this 17th day of February, 1893. Lindley & Eickhoff, and Geo. F. Hoeffer, Attorneys for Defendants. Filed February 17, 1893. L. S. B. Sawyer, Clerk.

*In the Circuit Court of the United States, Ninth Circuit,
Northern District of California.*

AUSTIN WALRATH,

Plaintiff,

vs.

THE CHAMPION MINING COMPANY

(a Corporation), ET AL.,

Defendants.

In Equity.
No. 11,639.

**Demurrer of Champion Mining Company to
Amended Bill of Complaint.**

The demurrer of the above-named defendant, Champion Mining Company (a corporation) to the amended bill of complaint of the above-named plaintiff:

This defendant, by protestation, not confessing or acknowledging all or any of the matters or things in the said amended bill of complaint contained to be true in such manner and form as are therein set forth and alleged, doth demur to said amended bill. And for causes of demurrer sheweth :

I.

That it appears by the plaintiff's own showing by the said amended bill that he is not entitled to the relief prayed by the amended bill against this defendant.

II.

That it appears by the said amended bill that there are divers other persons who are necessary parties to said amended bill, but who are not made parties thereto.

And in particular it appears that R. C. Walrath and J. V. Hunter are tenants in common with plaintiff in the premises described in plaintiff's amended bill of complaint, and that therefore said R. C. Walrath and J. V. Hunter are necessary parties to said amended bill, but neither said R. C. Walrath or J. V. Hunter are made parties thereto.

III.

That the said amended bill does not contain any matter of equity whereon this Court can ground any decree or give to the plaintiff any relief against this defendant.

IV.

That it appears from said amended bill that this Court has no jurisdiction over the subject matter of said action.

Wherefore, and for divers other good causes of demurrer appearing in the said amended bill, this defendant doth demur thereto. And this defendant prays the judgment of this Honorable Court whether it shall be compelled to make any answer to the said amended bill of complaint; and it prays to be herein dismissed with its reasonable costs in this behalf sustained.

LINDLEY & EICKHOFF,
GEO. F. HOEFFER, EDW'D LYNCH,
FRED SEARLES,

Solicitors for Champion Mining Company.

I hereby certify that the foregoing demurrer is in my opinion well founded in point of law.

CURTIS H. LINDLEY,
Of Counsel for Defendant Champion Mining
Company.

STATE OF CALIFORNIA,
City and County of San Francisco,
Northern District of California.) } ss.

Joseph S. Schuster, being duly sworn, deposes and says: I am the President of The Champion Mining Company (a corporation), defendant herein. The foregoing demurrer is not interposed for delay.

JOSEPH S. SCHUSTER.

Subscribed and sworn to before me this 16th day of March, 1893.

(Seal.)

LEE D. CRAIG,

Notary Public in and for the City and County
of San Francisco, State of California.

[Endorsed]: Service of the within Demurrer and receipt of copy is acknowledged this 16th day of March, 1893. Smith & Murasky, Attorneys for Plaintiff. Filed March 16, 1893. L. S. B. Sawyer, Clerk. By W. B. Beaizley, Deputy Clerk.

At a stated term, to-wit: the February Term, A. D. 1893 of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Northern District of California, held at the courtroom in the City and County of San Francisco, on Monday, the 29th day of May, in the year of our Lord one thousand eight hundred and ninety-three.

Present: the Honorable JOSEPH McKENNA, Circuit Judge.

AUSTIN WALRATH,

vs.

CHAMPION MINING COMPANY, ET AL.

No. 11,639.

Order Overruling Demurrer to Amended Bill of Complaint.

The demurrer of The Champion Mining Company to the amended bill of complaint herein, heretofore argued and submitted to the Court for consideration and decision, having been duly considered and an oral opinion of the Court having been delivered, it is ordered that said demurrer be and the same hereby is overruled with leave to the respondent, The Champion Mining Company, to answer herein in thirty days.

*In the Circuit Court of the United States, Ninth Circuit,
Northern District of California.*

AUSTIN WALRATH,

Plaintiff,

vs.

THE CHAMPION MINING COMPANY

(a Corporation), ET AL.,

Defendants.

Answer of Champion Mining Company.

The answer of the defendant Champion Mining Company, (a corporation), to the amended bill of complaint of Austin Walrath, plaintiff.

The defendant Champion Mining Company, (a corporation), now and at all times hereafter saving to itself all and all manner of benefit or advantage

of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said amended bill of complaint contained, for answer thereto or to so much thereof as this defendant is advised it is material or necessary for it to make answer to, answering saith:

Admits that the defendant Champien Mining Company is and at all times in said amended bill of complaint mentioned has been a corporation, duly formed, organized and existing under the laws of the State of California, as in said amended bill of complaint alleged.

Admits that R. C. Walrath, J. V. Hunter and the plaintiff, Austin Walrath are now and for the period mentioned in said amended bill of complaint have been the owners in common, in the possession in common and entitled to the possession in common of that certain piece and parcel of land as described in said amended bill of complaint and therein and at the Land Office in Sacramento, California, designated as Mineral Entry No. 7, and as lot No. 40 in the west $\frac{1}{2}$ of Sections 12 and 13, and the east $\frac{1}{2}$ of Section 17, all in Township No. 16 North, of Range 8 E, M. D. B. & M., Nevada Mining District, Nevada county, California.

Denies that said parties or either of them, either as said tenants in common or otherwise, are now or for the period mentioned in the amended bill of complaint or at all have been the owners of all or any ledges, lodes or veins of ore, mineral, metals, gold or silver-bearing rock or quartz or earth therein, thereon or thereunder, except as hereinafter specifically admitted.

Denies that said parties or either of them, either as tenants in common or otherwise, or at all, are now or for the period mentioned in the amended bill of complaint or at all have been the owners of the right to follow laterally or otherwise any ledge, lode or vein thereon or thereunder to any depth between vertical planes drawn through the end lines or prolongation thereafter, or between any vertical planes whatever, except as herein specially admitted, and in this behalf defendant alleges that the right of said plaintiff and his co-owners and each of them to follow laterally or at all, all or any veins, lodes or ledges or other rock in place of having their top or apex within the boundaries of the premises described in plaintiff's amended complaint, is limited and confined as in this answer hereafter set forth and alleged.

Answering the allegation and averment in said amended complaint:

“ That continuously for more than thirty years last
“ past, the said R. C. Walrath, J. V. Hunter and the
“ plaintiff, Austin Walrath, have been by themselves,
“ their ancestors, predecessors in interest and grantors
“ in the open and notorious, exclusive and uninterrupted
“ ownership and possession of said land and premises
“ herein described, and of all ledges, lodes and veins of
“ ore, minerals, metals, gold or silver, and gold or silver-
“ bearing rock or quartz or earth therein or thereon or
“ thereunder, claiming the same openly, notoriously,
“ exclusively and adversely against the whole world and
“ have almost constantly during said period of thirty
“ years, been engaged in working and mining the lodes,

“ ledges and veins of ore, minerals, metals, gold and silver, and gold and silver-bearing rock and quartz and earth on and in said land and premises, and between said vertical planes, and in extracting therefrom gold and silver.”

Defendant admits the same except as to certain portions of said lodes, ledges and veins, and within certain vertical planes, as hereinafter specifically set forth.

Admits that said plaintiff and his co-owners have by themselves, their predecessors in interest and grantors, continuously, during the period mentioned in said amended bill of complaint, paid all taxes which have been levied or assessed against the land and premises described in said amended bill of complaint, and admit that they erected thereon mills, and have made the improvements on said property substantially as alleged in said bill of complaint, but as to the value of said improvements and the money expended in making them, defendant is wholly ignorant.

Defendant denies that either within the three years last past or ever, or at all, either with or without the knowledge or consent of said plaintiff, or said R. C. Walrath or J. V. Hunter, it has, without right or title, or at all, run any drift, tunnel or incline, or any other working, either from the mine of this defendant or elsewhere, for a distance of more than one hundred and fifty-eight (158) feet, or for any distance whatever, into the land and premises described in plaintiff's amended bill of complaint, except as hereinafter admitted and averred, and in this behalf this defendant alleges and shows to the Honorable Court as follows:

That at the time of the commencement of this action, and for more than five years next preceding, this defendant was, and now is the owner in possession, and entitled to the possession of those two certain mines and mining claims situated in the Nevada mining district, Nevada county, State of California, commonly known as and called the "New Year's" and "New Year's Extension" respectively.

That said New Year's mining claim is designated in the office of the United States Surveyor-General for the State of California as lot No. 182, in Township 16 North, Range 8 East, Mount Diablo Base and Meridian.

And said New Year's Extension mining claim is designated in said Surveyor-General's office as lot No. 183, in said township and range.

Said New Year's and New Year's Extension Mining Claims have been duly entered in the United States Land Office at Sacramento, and form a part of and are included within the entry designated in said Land Office as Mineral Entry No. 1,426.

Said New Year's Extension Mining Claim lies north of the premises described in plaintiff's amended complaint, and is partly contiguous thereto. Said New Year's Mining Claim adjoins the said New Year's Extension Mining Claim on the north.

And said defendant avers that it is and for more than two years last past has been the owner of all ledges, lodes and veins of ore, their top or apex within the boundaries of said claims, or either of them, and of the right to follow said ledges, veins and lodes and each of them laterally on their respective downward

courses to any depth between vertical plains drawn through the end lines and said lines extended in their own direction, though such lode or ledge may enter on its dip the ground adjoining.

That within the boundaries of said New Year's and New Year's Extension Mining claims is a ledge of rock in place, traversing on its length said New Year's and New Year's Extension claims in a general southerly direction, said ledge having its apex or top within the boundaries of both said claims.

That from a point on said ledge within the boundaries of said New Year's Claim, this defendant has sunk an incline shaft 1,000 feet in depth following the vein in its downward course into the earth, said vein dipping easterly at various angles.

That ten levels or drifts have been driven northerly and southerly from said shaft at distances down the shaft 100 feet from the top and every hundred feet thereafter. Said levels and drifts are run on the course of and along the vein northerly and southerly.

That each and every one of said levels are wholly within the boundaries formed by passing vertical planes through the end lines of said New Year's and New Year's Extension claims and through said end lines extended in their own direction.

That all of defendant's openings and workings of every description are wholly confined to said boundaries. That it has not in any manner penetrated nor does it threaten or intend to penetrate beyond said vertical planes.

Further answering said amended bill of complaint, defendant avers that said ledge traversing as aforesaid

said New Year's and New Year's Extension claims crosses in its onward course the southerly end line of said New Year's Extension claim and enters the lands and premises of plaintiff described in said bill of complaint. That on entering said plaintiff's claim, it intersects and crosses a boundary thereof, which said boundary is the line described in plaintiff's bill of complaint connecting the top of a boulder 8 feet in diameter in the bed of Deer creek with stake marked "P. Co. No. 12." That the course of said boundary is south 43 degrees west, and the length thereof between said points is 10.70 chains.

And defendant avers that said boundary of said plaintiff's claim so intersected by said ledge in its onward course is not the true end line of the premises described in plaintiff's complaint, but that said boundary line is a side line.

Defendant avers that the course of the true northerly end line of said plaintiff's premises is south 73 degrees west.

And defendant avers that the ownership by plaintiff and his co-owners of said ledge after it passes into their land as herein described, is limited, and their right to follow the same on its dip is confined to a vertical plane parallel to the true end line aforesaid drawn downward, and applied at the point where the apex of said ledge intersects the said side line of the lands of plaintiff and his co-owners.

And defendant avers that the plane last above described is the true bounding plane on the said ledge, and all ledges which pass through the lands of defend-

ant and enter the lands of plaintiff and his co-owners, between plaintiff and his co-owners and this defendant.

That this defendant has not in any way, manner or form penetrated or passed through said bounding plane, and all its workings of every nature are some distance to the north of said plane.

Defendant denies that plaintiff or his co-owners or their predecessors in title have ever been or are now in possession of any portion of said ledge underneath the surface of the earth lying north of said bounding plane except that as defendant is informed and believes plaintiff and his co-owners, or those in probity with said plaintiff have been a year last past extended the drifts and underground workings of the said Province mine northerly into and beyond said bounding plane against the will, wish and consent of this defendant.

Defendant denies that either at the times mentioned in plaintiff's bill of complaint, or ever or at all, it has entered in or upon any portion of the lands and premises of plaintiff and his co-owners, or upon any ledge or vein therein.

Denies that it has ever extracted therefrom or from any ledge or lode therein, large or any quantities of ore, or either gold or silver-bearing quartz, rock or earth or any other material, either of the value of \$300,000 or any other sum, or that it has removed ore, gold or silver bearing quartz, rock, earth or other material from said premises.

Denies that it is now extracting or threatens to extract either gold-bearing quartz or rock or earth or

other substance from any ledge whatever within plaintiff's ground except such ore and material as it may encounter north of the bounding plane set forth in this answer and alleged to be the true boundary between defendant and plaintiff and his co-owners.

Defendant denies that it has in any way, manner or form trespassed upon the ground mentioned in plaintiff's complaint, or conducted any mining operations whatever in or near the said premises except as in this answer set forth.

Wherefore, defendant prays that plaintiff take nothing by this action but that plaintiff's amended bill of complaint be dismissed and the defendant recover his costs.

LINDLEY & EICKHOFF,
FRED SEARLES and
GEO. F. HOEFFER,

Attorneys for defendant, Champion Mining
Company.

STATE OF CALIFORNIA, }
City and County of San Francisco. } ss.

G. Kartschoke being first duly sworn, deposes and says: I am the President of The Champion Mining Company, (a corporation), defendant named in the foregoing answer. I have read said answer and know the contents thereof. The same is true of my own knowledge except as to matters therein stated upon information and belief, and as to such matters I believe it to be true.

GUS KARTSCHOKE.

Subscribed and sworn to before me, this 31st day of August, A. D. 1893.

(Seal)

HARRY J. LASK,

Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: Service of the within Answer and receipt of copy is acknowledged this 31 day of August, 1893. Smith & Murasky, Attorneys for Plaintiff. Filed August 31, 1893. W. J. Costigan, Clerk. By H. J. McCormick, Deputy Clerk.

Circuit Court of the United States, for the Ninth Judicial Circuit, Northern District of California.

AUSTIN WALRATH,

Complainant,

vs.

CHAMPION MINING COMPANY, ET AL.

Defendants.

The Replication of Complainant, to the Answer of Defendant, Champion Mining Company.

Replication to Answer.

This repliant saving and reserving to himself now, and at all times hereafter, all and all manner of benefit and advantage of exception, which may be had or taken to the manifold insufficiencies of the answer of defendant, Champion Mining Co., for replication thereunto, saith that he will aver, maintain and prove said bill to be true, certain and sufficient in the law to be answered unto, and that the said answer of the defendant, Champion Mining Co., is uncertain, untrue and insufficient to be replied unto by this re-

pliant; that any other matter or thing whatsoever in the said answer of defendant, Champion Mining Co., contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true.

All of which matters and things this repliant is now and will be ready to aver, maintain and prove as this Honorable Court shall direct, and humbly pray as in and by his said bill he has already prayed.

SMITH & MURASKY,

Solicitors for Complainant.

[Endorsed]: Service by copy of the within Replication is hereby admitted this 4th day of Dec., 1893. Lindley & Eickhoff, Attorneys for Defendant. Filed Dec. 5th, 1893. W. J. Costigan, Clerk. By W. B. Beaizley, Deputy Clerk.

*In the Circuit Court of the United States, in and for
Ninth Circuit, Northern District of California.*

AUSTIN WALRATH,

Plaintiff,

vs.

THE CHAMPION MINING COMPANY, (a
Corporation) and JOHN DOE, RICH-
ARD ROE and PETER STYLES, whose
real names are unknown,
Defendants.

No. 11,639.

Amended Complaint for Trespass and Damages.

Now comes the plaintiff in the above-entitled action, and by leave of the court first had and obtained, and

under and in pursuance of the order of this Honorable Court, dated the 13th day of February, A. D., 1893, duly made and entered in the minutes of the court, granting leave to said plaintiff to amend the original complaint contained in the record in this action removed from the Superior Court of the State of California, in and for the County of Nevada, and filed herein, and to re-plead the causes of action therein alleged, so as to conform to the rules of pleading and practice in this court, and files this, his amended complaint, for the trespass and damage alleged in said complaint filed in said State court, and alleges:

I.

That the real names of the defendants, John Doe, Richard Roe and Peter Styles, three of the defendants in the above-entitled action, are unknown to the plaintiff aforesaid, and plaintiff prays that when the true names of said defendants sued herein as John Doe, Richard Roe and Peter Styles, become known, such true names shall be inserted herein with proper and apt words to charge them.

II.

That The Champion Mining Company, one of the defendants in the above-entitled action, is now, and at all the times herein mentioned was a corporation duly organized and existing under the laws of the State of California by and under the corporate name of The Champion Mining Company.

III.

That R. C. Walrath, J. V. Hunter and the said plaintiff, Austin Walrath, are now, and continuously for

more than eighteen years last past have been the owners in common, in the possession in common entitled to the possession in common of all of that certain piece or parcel of land situate, lying and being on the south side of Deer creek, about one mile below Nevada City, in the county of Nevada, State of California, commonly known and designated as the Providence Mining Claim, and bounded and described as follows, with magnetic variation at 18 degrees east, to-wit:

Beginning at oak tree 36 in. in diameter, marked "P. Co. No. 1" on E. side, which stands on the crop-pings of the Providence quartz ledge, on the W. side of Dingley's orchard; thence north 39 degrees W. descending 4 chs. to stake marked "P. Co. No. 2" with mound of rocks; thence N. 58 degrees E. along face of hill 9 chs. and 10 links to fallen oak marked "P. Co. No. 3," 16 chs. to a stake marked "P. Co. No. 7," with mound of rocks; thence N. 33 degrees 30 minutes W. descending 1 chain and 50 links to south bank of Deer creek 3 chains to middle of channel 3 chs. and 80 links to large rock on N. side of said creek; thence south 71 degrees W. along N. side of said creek 4 chs. and 90 links to an oak tree 6 in. in diameter blazed and marked "P. Co. No. 9"; thence south 26 degrees and 30 minutes E. 1 chain to middle of Deer creek, 2 chains to top of large boulder on S. bank of Deer creek, from which a maple 4 in. in diameter bears S. 30 degrees E. at the distance of 90 links; thence S. 73 degrees W. along S. side of Deer creek 8 chs. and 40 links to a point from which the mouth of the tunnel bears S. 10 degrees E.

at the distance of 20 links 9 chs. and 80 links to top of boulder 8 feet in diameter in bed of said creek; thence south 43 degrees W. along bed of said creek 1 chain and 90 links to section line between Sections 11 and 12 of Township 16 N., R. 8 E. 5 chains and 50 links to a point from which the mill standing on the east side of the mouth of Peck's ravine bears S. 8 degrees E. at the distance of 50 links, 10 chs. and 70 links to stake marked "P. Co. No. 12" with mound of rocks at foot of a point of rocks; thence S. 38 degrees 30 minutes E. along face of hill 9 chs. and 80 links to a stake marked "P. Co. No. 13" with mound of rocks, at the corner common to Sections 11, 12, 13 and 14 of Township 16 N., R. 8 E., M. D. B. & M. from which a spruce tree 36 in. in diameter bears N. 34 degrees W. at the distance of 70 links; thence S. 33 degrees E. along face of hill 5 chs. and 95 links to a spruce 40 in. in diameter marked "P. Co. No. 14", on its E. side; thence S. 18 degrees E. 6 chs. and 10 links to a spruce 30 in. in diameter marked "P. Co. No. 15" on its E. side; thence N. 35 degrees 30 minutes E. 75 links to middle of Peck's ravine 1 chain and 51 links to stake marked "P. Co. No. 16," with mound of rocks; thence S. 24 degrees E. along E. side of Peck's ravine 9 chs. and 82 links to stake marked "P. Co. No. 17," with mound of rocks beside a pine tree 3 in. in diameter; thence N. 77 degrees E. 1 chain and 52 links, crossing croppings of ledge 4 chains and 54 links to a stake marked "P. Co. No. 18," beside a pine tree 4 in. in diameter; thence N. 14 degrees W. along western slope 19 chains and 20 links to a section line between Sections 12 and 13, Township

16 N., R. 8 E. 27 chains to stake marked "P. Co. No. 19," with mound of rocks; thence S. 74 degrees W. 44 links to Rough and Ready ditch, 3 chs. and 3 links to the place of beginning, containing 33 92-100 of an acre of land, the same being known on the 28th day of April, 1871, at the land office at Sacramento, as Mineral Entry No. 7, and designated as Lot No. 40 on W. $\frac{1}{2}$ of Sections 12 and 13 and east $\frac{1}{2}$ of Section 11, all in Township 16 North, of Range 8 E., M. D. B. & M., Nevada Mining District, Nevada County, California, together with the exclusive right of possession and enjoyment of all the surface included within the exterior lines of said mining claim for its entire length, and the said Providence lode or ledge throughout its entire depth, although it may enter the land adjoining, and also of all other veins, lodes or ledges or deposits throughout their entire depth, the tops or apexes of which lie inside of said surface lines extended downward vertically, although said veins, lodes, ledges or deposits may so far depart from a perpendicular in their course downward into the earth as to extend outside of the vertical side lines of said mining claim, and the exclusive right of possession of such outside parts of such veins or ledges, and to such portions thereof as lie between vertical planes drawn downward through the end lines of said mining claim, so continued in their own direction that such planes will intersect such exterior parts of such veins or lodes.

IV.

That within the boundaries of said mining claim there are, besides the said Providence lode, other veins

or lodes or ledges of rock in place containing gold, silver and other valuable metals, one of which said veins or lodes is commonly known and designated as the "Ural" vein or lode, and sometimes called the "Back Ledge" or "Contact Vein."

V.

That the course of said last-mentioned vein is in a general northerly and southerly direction, and parallel with the side line of the Providence mining claim hereinbefore described, and crosses in its onward northerly course or strike that certain line of the Providence mining claim hereinbefore set out and described as the line running south 43 degrees west a distance of 10.70 chains along the bed of Deer creek from the top of a boulder 8 feet in diameter in said bed of Deer creek to a stake marked "P. Co. No. 12," in mound of rock at foot of point of rocks, at an angle of about sixty degrees, and at a point about 472.7 feet northeasterly on said line from drill in point of rocks known as "P. Co. No. 12," which said last-named line is the northerly end line of said Ural vein or lode.

VI.

That the southerly end line of said Ural or Back vein is parallel with said northerly end line above described.

VII.

That the top or apex of said Ural lode or vein lies inside the surface lines of said Providence mining claim, and at certain points said vein, lode or ledge so far departs from a perpendicular in its course downward as to extend outside the northeasterly side line

extended downward vertically of said Providence mining claim and the said Ural lode or vein and into the land adjoining.

VIII.

That the said plaintiff, Austin Walrath, and J. V. Hunter and R. C. Walrath, are the owners in common, in the possession and entitled to the possession and the exclusive right of possession and enjoyment of every part and portion of the said Ural ledge and to such portions of said vein, lode or ledge as lie inside of the said surface boundary lines above described drawn vertically downward, and to such parts or portions as lie outside said boundary lines between vertical planes drawn downward through the end lines of said mining claim and said Ural vein or lode so continued in their own direction that such planes will intersect such interior parts of said Ural vein or lode.

IX.

That prior to the commencement of this action, the defendants without the knowledge or consent of the said R. C. Walrath, J. V. Hunter and the plaintiff Austin Walrath, or any of them, and without right or title, run tunnels, drifts and other mining works from the main incline of that certain mining claim commonly known and designated as The Champion Mine, which said claim adjoins the Providence mining claim on the north, and on or about the month of November, 1891, by means of said tunnels, drifts and other mining works, broke and entered into the said Providence mining claim and into and upon the said Ural vein or lode, and into such outside parts of said

Ural vein or lode as lie between vertical planes drawn downward through the end lines of the said Providence mining claim and the said Ural vein or lode, so continued in their own direction that such planes will intersect such exterior parts of said Ural vein or lode.

X.

That ever since on or about the month of November, 1891, the said defendants have from day to day and up to on or about the 9th day of December, 1893, wrongfully and unlawfully mined and extracted large quantities of ore and gold and silver-bearing rock from the said Providence mining claim and said Ural or Back ledge within said surface lines drawn vertically downward and from said outside parts of said Ural vein between said above described planes and took and carried away from the above-described premises said ore and gold and silver-bearing rock and converted the same to their own use.

XI.

That the said ores so mined, extracted and carried away and converted by the said defendants to their own use, were at the time of extracting, taking and carrying away said ores of the value of three hundred thousand dollars in gold coin of the United States of America.

XII.

That on the 21st day of May, A. D. 1892, the said R. C. Walrath and J. V. Hunter, for a valuable consideration, sold, assigned, transferred and set over to the plaintiff herein all their right, title and interest in the ores ex-

tracted, taken and carried away by the said defendants from said Ural ledge, and all causes of action on account of the taking of said ore, and for any trespass committed, or which might be thereafter committed by the said defendants, or either of them, and the said plaintiff has never sold, assigned or transferred said causes of action so assigned or set over to him.

Wherefore, the said plaintiff prays judgment against the said defendants:

1. For the value of the ores taken and converted, as alleged in the complaint, to-wit; the sum of three hundred thousand dollars.
2. For costs of suit.

SMITH & MURASKY,

Attorneys for Plaintiff.

We hereby certify that the foregoing amended complaint is filed this day in good faith and not for delay.
January 8th, 1894.

SMITH & MURASKY,

Attys. for Plff.

STATE OF CALIFORNIA,
City and County of San Francisco. } ss.

Austin Walrath, being duly sworn, deposes and says: That he is the plaintiff in the above-entitled action; that he has heard read the foregoing complaint and knows the contents thereof; that the same is true of his own knowledge, except as to the matters which are therein stated on his information or belief, and as to those matters that he believes it to be true.

AUSTIN WALRATH.

Subscribed and sworn to before me this 8th day of January, 1894.

(Seal)

J. J. COONEY,

Notary Public in and for the City and County
of San Francisco, State of California.

[Endorsed]: Copy of within Amd. Comp. delivered to us this 8th day of January, 1894. Lindley & Eickhoff, Attorneys for Def't. Filed January 8th, 1894. W. J. Costigan, Clerk.

*In the Circuit Court of the United States, Ninth Circuit,
Northern District of California.*

AUSTIN WALRATH,

Complainant,

vs.

THE CHAMPION MINING COMPANY

(a Corporation), ET AL.,

Respondents.

No. 11,659.

Enrollment.

The transferred record from Nevada county, Cal., in said cause was filed in this court June 25, 1892, and is hereto annexed.

The respondent appeared herein on the 6th day of August, 1892, by Lindley & Eickhoff, Esqs., its solicitors.

And on the said 6th day of August, 1892, a demurrer to the complaint was filed herein, which is hereto annexed.

On the 13th day of February, 1893, an order was made sustaining said demurrer, a copy of said order being hereto annexed.

On the 17th day of February, 1893, complainant filed an amended complaint which is hereto annexed. On the 16th day of March, 1893, defendant's attorneys filed a demurrer to said amended complaint, which is hereto annexed. On the 29th day of May, 1893, the defendant's demurrer was overruled, a copy of the order overruling same being annexed. On the 31st day of August, 1893, defendants filed an answer to said amended complaint, which is hereto annexed. On the 5th day of Dec., 1893, a replication was filed herein and is annexed. On the 8th day of January, 1894, an amended complaint was filed by leave of Court which is annexed hereto. On the 4th day of May, 1895, a final decree was signed, filed and entered and is hereto annexed.

*In the Circuit Court of the United States, Ninth Circuit,
Northern District of California.*

AUSTIN WALRATH,

Complainant,

vs.

CHAMPION MINING COMPANY, (a Corporation),

Respondent.

Decree.

At a previous stated term of the Circuit Court of the United States in and for the Ninth Circuit, Northern District of California, this cause was tried, argued by counsel for the respective parties and submitted to the Court for its decision and the Court being fully advised in the premises now orders, adjudges and decrees as follows:

That (subject to the limitation in this decree hereinafter expressed) the complainant is the owner and entitled to the possession of all that certain mine and mining ground, situate, lying and being on the south side of Deer creek about one mile below Nevada City in the County of Nevada, State of California, commonly known as and designated as the Providence mine, bounded and particularly described as follows, to-wit:

Beginning at oak tree 36 in. in diameter, marked "P. Co. No. 1" on E. side, which stands on the cropings of the Providence quartz ledge on the W. side of Dingley's orchard; thence N. 39 degrees W. descending 4 chs. to stake marked "P. Co. No. 2" with mound of rocks; thence N. 58 degrees E. along face of hill 9 chs. and 10 links to fallen oak marked "P. Co. No. 3" 16 chs. to stake marked "P. Co. No. 7" with mound of rocks; thence N. 33 degrees, 30 minutes, W. descending 1 ch. and 50 links to S. bank of Deer creek 3 chs. to middle of channel, 3 chs. and 80 links to large rock on N. side of said creek; thence S. 71 degrees W. along N. side of said creek 4 chs. and 90 links to an oak tree 6 in. in diameter, blazed and marked "P. Co. No. 9;" thence S. 26 degrees and 30 minutes E. 1 chain to middle of Deer creek, 2 chs. to top of large boulder on S. bank of Deer creek, from which a maple 4 in. in diameter bears S. 30 degrees E. at the distance of 90 links; thence S. 73 degrees W. along S. side of Deer creek 8 chs. and 40 links to a point from which the mouth of the tunnel bears S. 10 degrees E. at the distance of 20 links, 9 chs. and 80 to the top of boulder, 8 feet in diameter in bed of said creek; thence S. 43 degrees

W. along bed of said creek, 1 chain and 90 links to section line between Sections 11 and 12 of Township 16 N., R. 8 E. 5 chs. and 50 links to a point from which the mill standing on the E. side of the mouth of Peck's ravine bears S. 8 degrees E., at the distance of 50 links, 10 chs. and 70 links to stake marked "P. Co. No. 12," with mound of rocks at foot of a point of rocks; thence S. 38 degrees 30 minutes E. along face of hill 9 chs. and 80 links, to stake marked "P. Co. No. 13," with mound of rocks, at the corner common to Sections 11, 12, 13 and 14, of Township 16 N., R. 8 E., M. D. B. and M., from which a spruce tree 36 in. in diameter bears N. 34 degrees W. at the distance of 70 links; thence S. 33 degrees E. along face of hill 5 chs. and 95 links to a spruce 40 in. in diameter, marked "P. Co. No. 14" on its E. side; thence S. 18 degrees E. 6 chs. and 10 links to a spruce 30 in. in diameter marked "P. Co. No. 15" on its E. side; thence N. 85 degrees 30 minutes E. 75 links to middle of Peck's ravine 1 chain and 51 links to stake marked "P. Co. No. 16," with mound of rocks; thence S. 24 degrees E. along E. side of Peck's ravine 9 chs. and 82 links to stake marked "P. Co. No. 17," with mound of rocks, beside a pine tree 3 in. in diameter; thence N. 77 degrees E. 1 chain and 52 links, crossing croppings of ledge, 4 chs. and 54 links to a stake marked "P. Co. No. 18" beside a pine tree 4 in. in diameter; thence N. 14 degrees W. along western slope 19 chs. and 20 links to a section line between Sections 12 and 13, Township 16, N., R. 8 E., 27 chs. to stake marked "P. Co. No. 19," with mound of rocks; thence S. 74 degrees W. 44 links to

Rough and Ready ditch 3 chs. and 3 links to the place of beginning, containing 33 92-100 of an acre of land. The same being known on the 28th day of April, 1871, at the land office at Sacramento, as Mineral Entry No. 7, and designated as Lot No. 40, on W. $\frac{1}{2}$ of Sections 12 and 13, and E $\frac{1}{2}$ of Section 11, all in Township 16 North, of Range 8 E., M. D. B. and M., Nevada Mining District, Nevada county, California.

That the complainant is the owner of so much of the Ural or Contact ledge, within said ground as lies southeast of a plane drawn vertically downward through the line designated in the foregoing description of said Providence mine as running from top of boulder 8 feet in diameter in bed of Deer creek south, 43 deg. W. along bed of said creek ten (10) chains and seventy (70) links to stake marked 'P. Co. No. 12,' and of so much of said Ural or Contact ledge within said ground as lies south of a plane drawn vertically downward through the line designated in the foregoing description as running from top of large boulder on south bank of Deer creek south 73 deg. W. along the south side of Deer creek 9 chs. and 80 links, to top of boulder 8 feet in diameter in bed of said creek, and through said last described line produced north 73 deg. E. indefinitely, and of so much of said Ural or Contact ledge as upon its dip to the east in its downward course lies southerly and southeasterly of the said planes drawn downward vertically through the said lines as aforesaid.

That respondent is the owner of so much of said Ural or Contact ledge as lies northwesterly and northerly of said bounding planes, and of so much of said

Ural or Contact ledge as upon its dip to the east in its downward course lies northwesterly and northerly of said bounding planes, although on its said downward course said Ural or Contact ledge may enter and penetrate underneath a portion of the surface ground of said Providence mine lying north of the plane drawn through the last-named line aforesaid.

Second—The complainant is entitled to a perpetual injunction against the defendant, and it is hereby ordered, adjudged, and decreed, that a perpetual injunction issue against the defendant, its agents, servants, attorneys, and employees, commanding them and each of them to forever refrain and desist from entering into or upon the mining claim of complainant hereinbefore described except only as hereinabove provided, and that respondent do desist and refrain from entering into or upon or extracting, mining, taking or carrying away any portion of said Ural or Contact ledge which upon its dip to the east on its downward course lies southeasterly and southerly of the bounding planes hereinabove described, and from interfering in any way with the possession or enjoyment by complainant of any such portion of said ledge.

Let each party pay his own costs in this action.
May 4th, 1895.

THOMAS P. HAWLEY,
U. S. Dist. Judge, acting
Circuit Judge.

[Endorsed]: Filed and entered May 4th, 1895.
W. J. Costigan, Clerk.

Certificate to Enrollment.

Whereupon, the transferred record from Sup. Crt., Nevada Co., Cal., copy of orders overruling demurrers and final decree are hereto annexed, said final decree being duly signed, filed and enrolled, pursuant to the practice of said Circuit Court.

Attest, etc.

(Seal.)

W. J. COSTIGAN, Clerk.

[Endorsed]: Enrolled papers. Filed May 4th, 1895. W. J. Costigan, Clerk.

*In the Circuit Court of the United States, Ninth Circuit,
Northern District of California.*

A. WALRATH,

vs.

CHAMPION MINING COMPANY.

Opinion.

PATRICK REDDY AND J. F. SMITH, for complainants;
LINDLEY & EICKHOFF AND FRED SEARLES AND GEO. T.
HOEFFER, for respondents.

HAWLEY, District Judge.

This action is of the same character as the Con. Wyoming-Champion, just decided, and may be said to be a companion case, as it involves the title to a small segment of mining ground of the "Contact" vein situate farther south.

The Providence mine was located in July, 1857, in conformity with the local rules and regulations of the miners in the mining district where the claim is located. On the 28th of April, 1871, a patent was ob-

tained from the Government of the United States for 3100 linear feet of the Providence lode and for certain surface ground of irregular shape and form.

This patent was issued under the provisions of the Act of Congress of July, 1866, and the grant was "restricted to one vein, ledge or lode," and to the surface ground particularly described by metes and bounds.

Complainant derives his title to the Providence lode under said patent, as a co-tenant.

The respondent is the owner of the mining claims and ground known as the "New Year's" and "New Year's Extension." Its right to these claims was acquired subsequent to the Act of Congress of 1872, and is evidenced by a receipt and certificate of purchase from the United States Land Office, which is the equivalent of a patent. The original location of the New Year's Extension on its southeasterly side overlapped upon the surface of the Providence mine, in the form of a triangle.

In 1884, the owners of the Providence objected to this overlap upon their patented ground, and the result of this objection was that the respondent caused a relocation to be made by its superintendent, abandoning such portions of the lode and surface ground as were within the patented surface lines of the Providence. The notice of location of the New Year's Extension omitting certain portions—reads as follows:

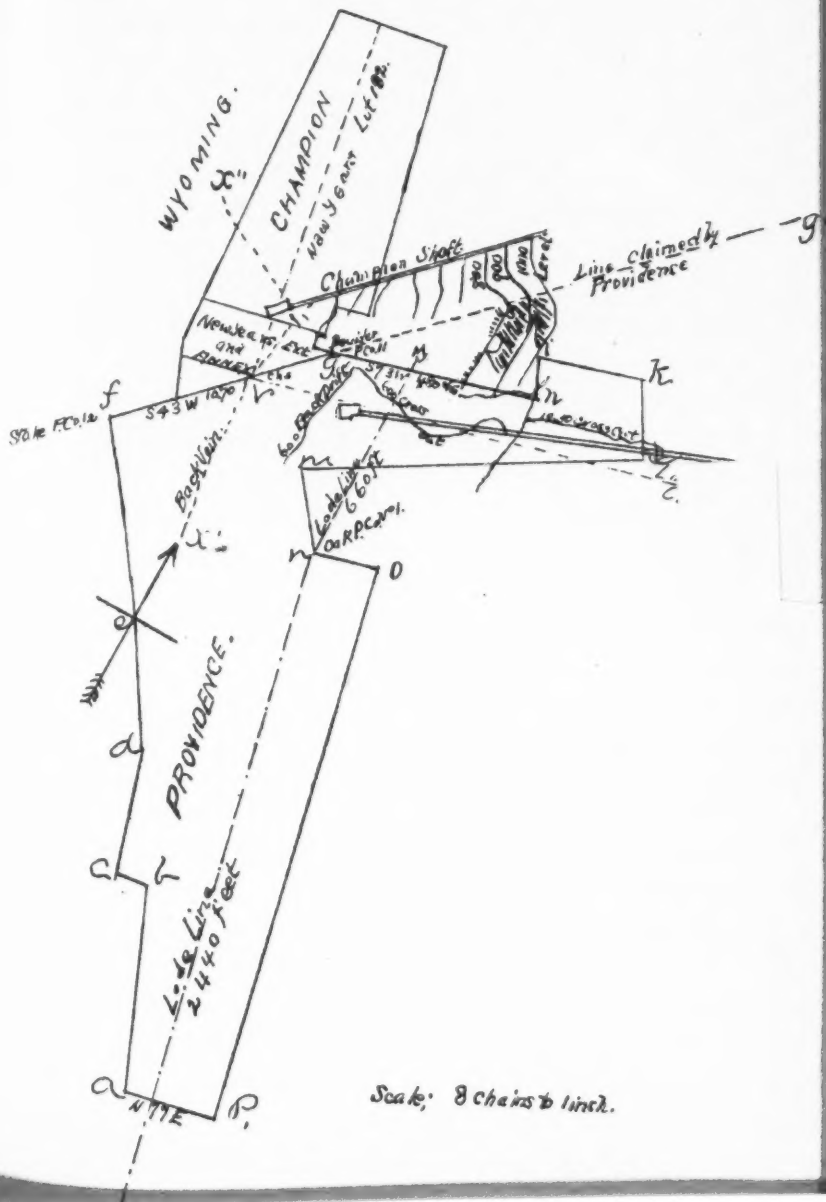
"The lode line of this claim as originally located and which I hereby relocate, is described as follows: "Commencing at a point on the northerly bank of

Deer creek, which point is 80 feet S. 11 deg. 45 minutes east of the mouth of the New Year's tunnel, and running thence along the line of the lode towards the NE. corner of the Providence mill, about S. 46 deg. 15 minutes east, 200 feet more or less, to a point and stake on the northerly line of the Providence mine patented, designated as mineral lot No. 40 for the south end of said lode line * * * And whereas part of this claim as originally described and as hereby relocated, conflicts with the rights granted by the letters patent of said Providence mine. * * * Now, therefore, so much of this claim, both for lode and surface ground, as originally designated, conflicted or now conflicts with any portion of the surface or lode claims or rights granted by said patent is and are hereby abandoned. Which portion of this claim so abandoned is described as follows: All that portion of the above-described New Year's Extension claim, for surface and lode, which lies south of the northern boundary line of said Providence mine which runs north 43 deg. 10 min. east, across the S. eastern corner of this claim."

Numerous maps, diagrams and models were offered by the respective parties. The following diagram is deemed sufficient to illustrate and explain the contention of the respective parties:

The lines a, b, c, d, e, f, g, h, i, k, l, m, n, o, p, represent the lines described in the patent of the Providence. The lode line from z to z, running in a northerly and southerly direction, represents the Providence lode described in the patent. This lode is in granite and is called the "granite lode;" its dip is to the east. The lode delineated on the diagram and marked "x x,"

EXHIBIT 3.





is a separate and independent lode from the granite, and is called by the complainant a "back vein," and by respondent the "contact" vein, between slate and granite walls. This lode is the same as was designated in the *Con. Wyoming v. Champion*, as the Ural or Contact vein. It will be noticed that in its course upon its strike it comes into the New Year's claim, across the Ural side line, marked "Wyoming" in the diagram, and passes through the New Year's in a southerly direction to the northerly line of New Year's Extension, when it changes its direction to a southerly course and extends through the New Year's Extension and across the line f, g, of the Providence surface line e, and extends through the Providence ground to the point x, as delineated on the diagram. Its direction beyond that point has not been ascertained, and is entirely problematical, and, as I think, is wholly immaterial. If it continues in the same direction it would cross the line of the Providence between d and f, near the point e; but for aught that appears in the evidence it may extend through the Providence ground and cross the line a, p. Its dip—like the Providence—is to the east.

The Providence lode as patented, extends northerly about 30 feet across and beyond the line g, h, and about — feet southerly beyond the south line a, p, of the surface location. No portion of the surface ground is in dispute. There is no controversy with reference to the Providence lode. The only controversy between the parties is in relation to the "contact" or "back" vein. What portion of this vein in its downward course is complainant

entitled to? Which line is the northerly end line of the Providence ground through which the vertical plane is to be drawn downward with reference to the "contact" vein?

Complainant claims that the line f, g, on the diagram, is the northerly line of the Providence with reference to this lode and that this line should be extended to g, and so on indefinitely downward. Respondent claims that the line should be drawn from the point where the lode crosses the southerly line of the New Year's Extension, or annex, covering the same ground from v to v, marked on the diagram as the "line claimed by Champion."

The case was argued ingeniously, with much zeal, force and ability upon both sides, and numerous questions of both law and fact were earnestly pressed upon the attention of the Court in favor of the respective contentions. Many of the points thus presented were—as in the Con. Wyoming case—novel and new and all of them were exceedingly interesting and have received a careful consideration. I shall content myself, however, by stating what is believed to be the proper construction of the statutes of the United States and announce my conclusion upon the questions involved without attempting to discuss all the legal points advanced by counsel.

As there is no dispute between the parties as to the right of complainant to the Providence lode it is unnecessary to discuss that question, except so far as it may tend to illustrate or explain the principle that is to be applied to his right to the contact vein. The Providence lode was located,

as before stated, prior to the Act of 1866, under the rules, regulations and customs of the miners in the district where the mining claim is situated. The locators were only required to designate the lode in their notice of location. The lode was the principal thing. The surface ground was a mere incident thereto for the convenient working thereof. The notice of location designated the number of feet that was claimed upon the load, and the locators were entitled to that number of feet, if allowed by local rules, in whatever direction the lode run, and to all its dips, spurs, angles and variations. The subsequent Acts of Congress did not interfere with these rights, but were in all respects confirmatory thereof. The Eureka case, 4 Saw. 323; Wilhelm vs. Sylvester, 35 Pac. Rep., 997.

The Act of 1866 provided a method whereby the owners of mining claims located prior to the passage of the Act, who had complied with these local customs, rules and regulations, might, upon certain conditions, receive a patent therefor from the Government of the United States. Parties applying for patents were required, among other things, to "file in the local land office a diagram of the same so extended laterally or otherwise as to conform to the local laws, customs and rules of miners, and to enter such tract and receive a patent therefor," etc., etc. Under the Act of 1866 parallelism of end lines was not required, but by the Act of 1872 parallelism of end lines is made essential. A survey of the surface ground must be made before it can be patented, and the surface lines of such survey should be

marked upon the ground, whether patented under the law of 1866 or of 1872. The intent of both acts, in this respect, is substantially to the effect that the mining locations made thereunder should be along the lode lengthwise, and the surface boundaries should be marked upon the claim. It was not intended by either act that the locator would have any right to follow the lode upon its strike beyond the surface lines of his location. The term "location" as used in both acts refers to the surface ground as well as to the vein or lode. The lode claim, whatever its nature, character or extent, is to be limited to the survey of the surface location and the title to the lode upon its strike is not given to any portion thereof which departs beyond the surface lines of the location.

In *Mining Co. vs. Tarbot*, 98 U. S., 463, familiarly called the Flagstaff case, the Supreme Court of the United States declared that under the act of 1866, as well as under the act of 1872, the location of a mining claim upon a lode or vein should be made along the same lengthwise of the course of its apex at or near the surface and, in the course of its opinion said: "The Act of 1872 is more explicit in its terms; but the intent is undoubtedly the same, as it respects end lines and side lines and the right to follow the dip outside of the latter. We think the intent of both statutes is that mining locations on lodes or veins shall be made thereon lengthwise, in the general direction of such veins or lodes on the surface of the earth where they are discoverable, and that the end lines are to cross the lode and extend perpendicularly downwards, and to be continued in their own direction

either way horizontally; and that the right to follow the dip outside of the side lines is based on the hypothesis that the direction of these lines correspond substantially with the course of the lode or vein at its apex on or near the surface." See also *Iron M. Co. vs Elgin M. Co.*, 118 U. S., 248; *The Eureka case*, 4 Saw. 323; *McCormick vs. Varnes*, 2 Utah, 355; 9 Mor. M. R. 505.

The patent to the Providence mine was confined to the Providence lode, and to the surface ground as surveyed and marked on the diagram filed in the land office. It granted no right to the owners of the Providence to the "back" vein. It was a grant to the Providence lode only, and in express terms excluded all others. The effect of the Act of 1872 was to grant to the owners of the Providence surface location all other "veins, lodes and ledges throughout their entire depth, the top or apex of which lies inside of such surface lines extended downward vertically in whatever course or direction they might run." In *Wilhelm vs. Sylvester*, 35 Pac. Rep. 997, the Supreme Court of California, in discussing this question, after quoting from Section 2322 of the Revised Statutes, said: "This language is clear and explicit, and in designating the property rights of locators, is in no wise ambiguous or uncertain. It expressly, and in language which needs no construction, grants to such locators every ledge or lode, the top or apex of which lies within the surface lines of the location; that is, such part of the ledge as lies within such lines. And there is no limitation or exception of any such ledge on account of the direction it may run. It may be parallel with the original

discovered ledge, or may approach it at right angles, or at an obtuse angle, or at an acute angle; it may intersect it or not, and still it may be clearly within the language of the said section."

The Act of 1872 in granting all other veins that were within the surface lines of previous locations did not create any new lines for such other veins, nor invest the court with any authority to make new end lines for such other veins. And it is apparent from an examination of the statute that the court has no power to make a new location for every vein that may be found within the surface lines of the location, and thereby enlarge the rights of the original locators.

When the end lines of a mining location are once fixed they bound the extra lateral rights to all the lodes that are thereafter found within the surface lines of the location.

It necessarily follows that the end lines of the Providence survey must be considered by the court as the end lines of any, and all other lodes or veins which lie "inside of the surface lines." Otherwise endless confusion would arise in the construction of the statute. End lines would have to be constructed in different directions if the separate lodes or veins found within the surface lines did not run parallel with each other, and the result would be that these lines extended might give to the owners of the claims a greater length along the lode as it extended downward than they had upon the surface.

If the same end lines which bind the extra lateral rights of the Providence surface apply to the contact vein and to all other veins, if any are hereafter found,

then no such difficulty can arise. This is the rule that applies to all locations made after the Act of 1872, and it ought not to be presumed that Congress—by its grant to prior locators—intended to give greater rights to them than were given and granted to subsequent locators under the same act.

It is settled by the decision of the Supreme Court of the United States, in *Iron S. M. Co. v. Elgin M. Co.*, that the same end lines bound all extra lateral rights as to all veins or lodes within the surface boundaries of the claim. Justice Field, in delivering the opinion of the Court, speaking of the rights of locators of mining ground to follow the lode in its depth, said: "It often happens that the top or apex of more than one vein lies within such surface lines, and the veins may have different courses and dips, yet his right to follow them outside of the side lines of the location must be bound by planes drawn vertically through the same end lines. The planes of the end lines cannot be drawn at right angle to the courses of all the veins if they are not identical."

In the present case, the end lines of the Providence—a, p, and g, h,—are conceded to be substantially parallel with each other, and that the Providence lode in its course lengthwise passes these end lines. Complainant's contention would take the "back" or "contact" vein outside of the plane of the northerly end line of the Providence drawn downward vertically, and give to him extra lateral rights not granted by the patent nor given to him by the granting provisions of the Act of 1872.

But in this connection it is argued by complainant, that respondent is estopped from asserting any claim to any vein or lode lying southerly from the line f, g, because (1) in its relocation of the New Year's Extension claim, it recognized and designated that line as the "Northerly end line of the Providence mine," and expressly abandoned all that portion of the original New Year's Extension claim "for surface and lode which lies south of the northern boundary line of said Providence mine, which runs north 43 deg. 10 min. east across the S. eastern corner of this claim." (2) Testimony was offered and admitted, against the objection of respondent, tending to show a further estoppel which was to the effect that before the Champion shaft was started the plans therefor were submitted by the then superintendent to the board of directors of respondent, and approved by it, and that the shaft was sunk; in pursuance of such plans, parallel with the line f, g, extended in the direction of g, and that the superintendent had conversations about that time with complainant and his brother—a co-owner in the Providence—and stated that he would never interfere with that line and would never cross it, and that this line was practically agreed upon by them at that time as the boundary line between the two claims.

This testimony, giving it full scope and effect, is not sufficient to create an equitable estoppel.

The corporation is not bound by such declarations of its superintendent made without the scope of his agency or authority from the corporation. If respondent was given the line for which it contends it would take that portion of the lode which it expressly aban-

done by its relocation. The abandonment, which is binding upon it, was to any and all lodes within the surface boundaries of the Providence location and survey; but this abandonment or agreement—or whatever it may be called—did not give to the Providence any greater rights than it previously had. The acquiescence and agreement between the parties amounted to nothing more than a recognition of both parties that the line f, g, was the boundary line between the two companies.

There is nothing in the facts of this case which gives to complainant any right to extend that line—as a boundary line—any further than to point g, at which point it comes to the line g h, which, as before stated, is the northerly end line of the Providence surface location, and beyond which, in a vertical line drawn downward, the complainant has no right to any part or portion of the “Back” vein, either by virtue of the Providence location patent, Act of 1872, or any agreement or estoppel between the parties.

Let a decree be drawn designating the boundary plane fixing the rights of the parties, in conformity with the views expressed in this opinion, for a perpetual injunction, and for an accounting, if so desired, each party to pay their own costs.

[Endorsed]: Filed Aug. 13, 1894. W. J. Costigan,
Clerk.

*In the Circuit Court of the United States, Ninth Circuit,
in and for the Northern District of California.*

Before Hon. T. P. HAWLEY, Judge.

A. WALRATH, ET AL.,

Complainants,

vs.

CHAMPION MINING COMPANY,

Respondents.

Appearances:

For complainants, Messrs. PATRICK REDDY AND J. F. SMITH.

For respondents, Messrs. LINDLEY & EICKHOFF.

FIRST DAY—MONDAY, May 28, 1894.

Opening Statement for Complainant.

MR. REDDY—I will endeavor to place the facts of this case before your Honor as briefly as possible in the opening statement.

On the 20th day of July, 1857, what was called the Providence lode was located. The location both for surface and vein is represented by Exhibit No. 1, as we will now call it. The vein located is represented as lying between M and N on the diagram. The length of the ledge located was 3100 feet, which was located by thirty persons, and one claim for discovery. The surface ground is represented by the red lines, and your Honor will observe that the ledge extends to the

northwards some thirty feet beyond the surface line, and some 600 feet south of the end of the surface location. This location, it will be observed at once, would not be regarded under the Act of 1872 as a valid location, not being in conformity with that act, but it was in conformity with the local rules and regulations, and on the 28th an application was made for a patent, and a patent was granted on the 28th of April, 1871, to the Providence Mining Company. The complainant and his co-tenants deraigned title from the Providence Company. My proposition is that a patent having been granted at that time, it was, of course, under the Act of 1866, and it must have been—at least it is my presumption, that the claim must have been located in accordance with the local rules and regulations, and that is why I say it was thus located. The owners continued in the possession, and from time to time in the working of the ledge represented by the line running between M and N. That was the original Providence location. Of course, we all understand that but one vein was granted by that patent, and all others within the surface lines were reserved by the patent, but subsequently that which was reserved by the patent was granted by the Act of 1872, and thus the owners of the Providence became not only the owners of the Providence, but from the Act of 1872, became the owners of all the veins having their tops or apexes within the surface lines; not only of the line running between M and N, but between the surface lines as described in the patent, and as represented here. There were no veins, and none could be granted, is our position, outside of

those surface lines, for under the mining rules and regulations of the district, the vein itself, and the vein alone might be taken up and patented; and in so far as the vein runs beyond the surface lines of course nothing was obtained by the Act of 1872. Nothing could have been obtained, because there was but one vein, and no vein could be granted within the vein, hence so far as those lines outside of the surface lines are concerned, nothing could be granted, nothing could be taken, and nothing was intended to be granted, but whatever veins were found within those surface lines belong to the party who had the patent to the Providence ground. That is our position. The owners, I say, remained in possession of this property. They had no adjoining claimants; that is, at least, none who were in conflict with them, until January 2nd, 1877, when a claim called by the locators the New Year's, which is represented on "Exhibit No. 2" as we will call it—at that time a claim called the New Year's was located in the interest of the defendant, the Champion Mining Company, and is numbered Lot No. 182 on this map. This line green, marks the south end line of the New Year's as it now stands. It extended still further south when it was originally located, but it was relocated at a subsequent date. On the 15th day of November, 1884, the New Year's was relocated so as to conform to the diagram now presented. That is the form and figure of the New Year's, and its position relatively to the other claims on the map. The difference between the New Year's relocation is shown by the mark in buff. That was left off in the relocation. In November, 1877, what was called the New

Year's Extension was located in the interest of the defendant. The New Year's Extension is shown by the line in green, that being the northern boundary line. It extended down and including the part that is marked here in purple, and on around then by the green lines are its boundaries marked. In 1878 a claim called the Twin was located in the interest of the defendant, and covered the ground marked on the map as the New Year's Extension, except the ground in purple. That was not included in the Twin, and the Twin, as I understand it, extended down to the northern boundary line of the Providence, which is marked there in red, covering all the ground included in the New Year's, and the space here which is subsequently shown as a mill-site, when I come to the next map; and afterwards a claim called the Annex was located, covering this same ground, except that it conformed to the red line marking the northern boundary of the Providence. On the 15th of November, 1884, the ground marked as New Year's, and marked here as the mill-site, was relocated and called the New Year's Extension relocation, and it is so marked here on the map. That location took in all of the ground between the south end line of the New Year's, as relocated, and the Providence north boundary line, which is marked in red here. That included also the mill-site. The mill-site—I am a little ahead of my story—the mill-site was claimed in 1880, I believe, but as your Honor will perceive, it was all relocated as the New Year's Extension. It was all taken up as that.

Now, that is the history of the locations adjoining the Providence up to the time mentioned, and that is the situation to-day.

MR. LINDLEY—The relocation of the New Year's Extension, as I understand your theory of the matter, eliminated all surface conflict as to the surface patented lines?

MR. REDDY—Yes, sir; and as to the lode line also. In the notice of relocation of the New Year's Extension it was expressly stated that all ground south of the Providence north boundary line was abandoned, both the lode and the surface, and we shall contend, first, that the red line, which I think represents all between A and P, and a line which is said to reach south, 43 degrees west—that, we shall contend, is the north end line of a certain vein which I shall name hereafter—that that is the north end line of the vein for the Providence, the south end line of the vein on the side of the New Year's Extension as relocated; that whether it would have been so, or was so at law, it was agreed upon afterwards by the parties. The Providence people, of course, have this patent, and when these locations were made here, some of them invaded the Providence line. Objection was made. The matter was reported to The Champion Company, and they had this notice of relocation of the New Year's Extension drawn and placed in the hands of the superintendent, and for the express purpose of avoiding any conflict, and fixing that as their south line, and conceded it to be the north line of the Providence, and this with reference to a vein which is marked on "Exhibit No. 1"—your Honor will see it there marked as "back vein." In other words, the north boundary line referred to is claimed as the end line of what is called the Back vein. That vein, it is

conceded on all sides, existed that far in the Providence ground, and is also on the other side, and in this notice of relocation of the New Year's Extension it is expressly stated that the Providence line is the south end line for the New Year's on that lode, and our position is, that if it is the south end line on that lode for the New Year's, that it must necessarily be the north end line of the Providence, because it crosses the common boundary line, and if it is the end line for one it is the end line for the other. That is our position, and that is the question in the case, whether the line referred to is the north end line for that vein.

We have shown now, we think, the different locations, and now we should have another map. The Providence worked on this so-called Back ledge for a number of years, undisturbed and unmolested by any one, until in the latter part of 1891, some time perhaps as early as November, when the defendant, The Champion Mining Company, drifted on the vein from the Champion shaft, which lies—well, I have a map here in a moment which will explain to your Honor where the shaft is situated. Now A and B on this map will be what is claimed by the complainant to be the north boundary line, and conceded to be the north boundary line of the Providence. This dotted line is the projection of that northern boundary, or intended to be. Your Honor will see that here is the Champion shaft, the main working shaft. Your Honor will observe that it is parallel with that line, and the reason why it was made so I will explain hereafter. But to the point: In the latter part of 1891, the defendant, The Champion Mining Company, drifted along

what they call the Contact, and which is represented on our map as the Back vein—they drifted along until they crossed in, as shown by this line, at the 800 level—drifted along through the ground in dispute, because the ground in dispute is marked in the dotted line, and a prolongation of the north boundary of the Providence. But they did not stop at that boundary. They went on into the Providence ground—that is, if you draw a line down vertically, and began stoping ore as represented by this map. They followed it up by another level on the 9th, and again on the 10th, and stoped out as represented there.

On the 24th of May, 1892, I believe, the complainant began suit in the Superior Court of Nevada county in this State, asking for damages in the sum of \$300,000, the value of the ore taken out of these stopes, and also for an injunction to restrain—and also to enjoin the defendant from further work in the ground in dispute. An injunction was granted, and the defendant then moved to transfer the case from the State court to this court.

MR. LINDLEY—There was no injunction issued out of the State court.

MR. REDDY—I remember now; you are right. Well, before an injunction was granted, an application to transfer was made, and this court granted an injunction restraining the defendant from any further work in that disputed ground. Upon the transfer, of course the pleadings were re-cast, and an action at law is now pending upon the law side of this court for the recovery of the damages claimed, and the bill here is

for an injunction, a perpetual injunction. Now the only matter in dispute is about the end line, so far as I can see.

MR. LINDLEY—There is absolutely no dispute about the surface boundaries; it is simply a question of end line planes.

MR. REDDY—In the answer to the amended complaint here, from which the legal cause of action was eliminated, the defendant admits that the complainant is the owner of the Providence mine as represented on these various maps, so that there is no dispute about that at all. They admit the ownership, but they deny that they have worked within our ground; but here are the facts. It is conceded there is no question about that, but they say this ground does not belong to us; that this is a side line and not an end line. They claim that that common boundary is an end line for one and a side line for the other, which, of course, might happen in certain cases, but not when the vein crosses that one common boundary line. That is our position. It is a fact conceded that the vein does cross that boundary line. I don't know whether I stated that clearly before, but that is a fact, and it seems to me that the whole matter is closed down to simply a matter of law.

THE COURT—It looks to be so from your statement.

MR. REDDY—First, of course, it will be conceded that it is a mineral-bearing vein such as might be located.

MR. LINDLEY—There is no question about that.

MR. REDDY—And that the ground where the stopping has been done was of great value, and such as would authorize a court of equity in interposing to protect it.

MR. LINDLEY - Certainly; that is admitted. We both would not be litigating over it if it was not of some value.

MR. REDDY—Now, with reference to the shaft, and concerning the agreed line. After the relocation of the New Year's Extension, and with a view to avoiding conflict, it was understood and agreed, after this shaft had been sunk down a little ways, the proprietors of the Providence went over and enquired about the purpose of sinking it, to see whether the direction was such as that it would cross this line of the Providence. The owners were assured that it was not the intention to cross that line, or to interfere in any way with the vein south of that line, and the notice expressly abandoned any ground south of that line, and your Honor will see that it is at least a singular coincidence if we should not be able to prove expressly in words what we have stated—that it is a singular coincidence that it should have been sunk on this line, parallel to this line, for the line of their shaft does parallel this line. That is one of the facts that we expect to establish in order to prove an agreed end line, and to corroborate the witness or witnesses who may testify to the fact that that was done under an agreement and an understanding, and with the purpose, known to both parties, to recognize that as the line.

I do not think that it will be necessary for me to take up any more time in going further into details, for as we advance, or rather in the final argument, we can present these questions better to your Honor than we can now.

I want to say a word further. We will have some photographs as we go on with our evidence that will probably enlarge the view of the Court as to the premises, and certainly illustrate the testimony of the witnesses.

I want to say this by way of obtaining an admission. I understand that it is not shown that there is no evidence—in other words, that it will be conceded that the vein after it crosses into the Providence ground has not been traced out of those lines, and that there is no evidence that it has gone out through the side lines.

MR. LINDLEY—We will have some evidence as to that.

MR. REDDY—Well, we will contend that it does not, and we have traced the vein beneath the surface so as to show so as to leave that it does not leave the side line, or leave the Providence line, and how far it extends to the southward we are unable to show, but we can by underground work show that it does not leave the side line at a certain point, and that point is further south, or as far south as any shown on the surface, and there is no means of determining except on the 600-foot level and raises therefrom to the surface, and what is to be seen on the surface.

I think that is all that it is necessary to state at this time.

Opening Statement for Respondent.

MR. LINDLEY—With the greater part of what Mr. Reddy has stated I concur, but he has presented the position taken by him in a little different way than I

would present the same question, and in order that the exact points of difference between Mr. Reddy and myself may be thoroughly appreciated and understood by the Court, let me briefly state the exact position of the respondent in this case.

It asserts no title whatever to anything lying out of the surface boundary lines of the Providence mine as delineated upon the various maps. It asserts title to nothing, I say, that was conveyed to the Providence Company, or the complainants in this case, by the United States patent and the laws of Congress passed subsequent to the Act of 1866.

The entire question in this case is, what are the each and several parties in this action entitled to by virtue of their various muniments of title? The Providence ledge, which was the ledge originally located, and originally patented, is a massive ledge lying entirely in the granite, and following almost the exact line of the lode line indicated upon the Providence map and plat. It is a separate and distinct entity from the ledge that is in controversy between these parties. There are no rights asserted either upon the dip or strike, lateral or otherwise, to the Providence ledge. There is another ledge that crosses into the surface boundary lines of the Providence that so far as developed passes down into the earth practically upon a plane parallel to the granite ledge, so that there is little likelihood of their ever coming together or causing any trouble between the different parties. The title claimed by the Providence mine, therefore, is a United States Patent issued under the Act of 1866, describing as the principal thing granted, a certain

number of linear feet upon the Providence ledge, and describing in the document accompanying the application for a patent the extent of the surface boundaries that enclose the ledge, so we may refer for a moment in elucidating our theory to the surface lines of the Providence property as patented for a double purpose; first, for the purpose of determining what might be considered the true end lines of the survey, as under the Act of 1866 end lines were contemplated and required as under the Act of 1872—what are the two end lines of its location with reference to the principal thing granted. We find a ledge passing through two lines, which, under the decisions of the courts as well as a rational interpretation of the Act of 1866, determines their right to follow that ledge upon its downward course, strictly performing the function of end line. We find upon inspection of them that they are substantially parallel, although under the Act of 1866 they might not be required to be parallel; but we find, so far as the patented ledge is concerned, a well-defined set of end lines, performing the function, or determining the right of the Providence Company upon the ledge on the strike, and another matter, which may be a coincidence, practically drawn at right angles to the course of the ledge.

MR. REDDY—Do you call those blue lines there the end lines of the Providence?

MR. LINDLEY—Yes, sir.

MR. REDDY—Notwithstanding that the ledge goes 600 feet to the south and 30 feet to the north?

MR. LINDLEY—They are the end lines of the location. They are the end lines, so far as that ledge is con-

cerned on the survey. The extent beyond that to follow the ledge, beyond what I call the north end line, or to follow it southerly beyond what I call the south end line, is not involved in this controversy, and we care nothing about it, unless they proceed a little further up and attempt to invade some other ground which is not involved in this controversy. Therefore I say that before the passage of this Act of 1872 we have the granite ledge, or the principal Providence ledge, with a series of surface boundaries delineated upon this map in blue, with two lines crossing the ledge upon its course, crossing at right angles to it, and forming what we call the end lines of the location. That is the language I propose to use all the way through, because the Act of 1872 referred to all other lodes or ledges within the surface lines of the location. It appears, and both parties concede, that another ledge, known to us as the Contact ledge, and called by counsel on the other side of the case the Back ledge, because it lays back of the Providence ledge, passes on out of the New Year's through the New Year's Extension, to a point upon the Providence line, marked upon its map as "D", thence pursuing in a general southerly course to a point as far determined accurately and actually by the actual developments, and hypothetically by respondent, to point "A."

The title to the New Year's Extension consists of a certificate of purchase issued by the receiver of the United States Land Office in the year 1880. The parties agree, and the surveyors have agreed upon the lines: It will be observed that the New Year's Ex-

tension has the ledge crossing both of its end lines, and all other things being equal, would have a right to pursue that ledge upon its downward course within vertical planes drawn through the end lines. The Providence people have no surface openings upon this ledge. In the history of the operation of the mine, their main incline working shaft being sunk upon the granite ledge, they drove back on cross-cuts through the country rock of granite until they struck the back ledge—our contact ledge—and there it seems considerable stoping was done on the cross-cut to the 600 foot level. They subsequently drove another cross-cut from the 1250 level, back through the country rock until it struck this vein upon its dip, some considerable distance below the surface.

The titles represented in this case are United States patents or their equivalents, a certificate of purchase standing for all the purposes of this case as a Government patent, and being no more open to collateral attack than the patent to the Providence mine. It is our contention that so far as the right to the contact or back ledge is concerned in the Providence mine, it is derived solely from the Act of 1872. It was a donation, and our contention is that this should be treated as if it were a location made upon the Contact ledge, so far as its right is concerned, after the passage of the Act of 1872—in other words, that the lines of their location were so placed that their side lines were intersected by the ledge upon its onward course, and that we have to apply an end line plane at the point where the lode crosses what we call the side lines; in other words, that the Government granted by the Act

of 1872 to the Providence Company that segment of the Contact ledge that lay between vertical planes drawn downward through lines parallel to the true end lines of the claim applied at the point where the ledge crosses the side line; that that segment of the ledge, assuming Point "A" to be the point of departure out of the side line, would be indicated by the line "D E," and, if you please, "A F." That would describe the segment of the lode in its entirety, to which the complainant in this action is entitled by the grace of the Act of 1872. These lines "B G" and "B A" are parallel to nothing in the entire surface boundaries. The Government granted so much of that lode to them as we say lay within those planes, or it granted, we say, no extra lateral right whatever; and therefore there are but two possible theories; in our judgment, that can be plausibly maintained in this case, and that is the end line parallel to the south end line, or the north end line, if you please—there is a very small variation, but we are not going to quibble over trifles—constructed at the point "D" and through the line "D E," and that line continued in its own direction, but absolutely no extra lateral right whatever, or the right to follow the ledge out of any of the surface boundaries. We contend that the Government granted to the Providence people, subject to the right of a junior locator to appropriate by a proper and valid location, the apex of a vein lying outside of the Providence boundary lines, and that all that the Providence company received by their title was such as would probably be considered the dip of the ledge from the point where it crosses

their side line, and that a junior locator with a later location, cannot be deprived of his rights by an irregularity, and so far as the Act of 1872 is concerned, a void location; that his rights are reserved by reason of the irregularity of the location made by the Providence, so far as this contact ledge is concerned.

Now, to refer for a moment to the alleged agreed line. I know that Senator Reddy did not mention that to have the Court to understand—at least I believe he did not—that there was any such agreement executed between the parties.

MR. REDDY—No; I don't mean to say that it was in writing, but by acquiescence and other locations.

MR. LINDLEY—When you come to examine that relocation—however, we don't claim under the relocation when we made our relocation and withdrew from the surface conflict we specifically recited in that relocation that the reason for making it was the surface conflict with the Providence lines, and that we located all of the lode up to that point, and the surface is relinquished and abandoned, not to the Providence Company, but to the Government of the United States, all that was included within the Providence patent, the notice of relocation especially referring to the Providence patent; and that a location upon the surface never deals with underground problems, but delineates its boundary lines, and its underground rights are entirely determined by the location of its surface lines. We contend that the alleged estoppel, if you please, is no estoppel, because it was not made by ignorance of any of the parties. There was no consideration for it; there was no deception practiced; the

Providence Company parted with no value upon the strength of it, and it was merely a declaration of what the law would enforce upon the Champion people, that they should invade the patented territory of the Providence Company, and we have not, and we do not propose to, until this Court shall say we have done so. Mr. Reddy's theory will produce this side line "B G" in this direction out to "B," and naturally, if this ledge goes as we will try to prove it does go, he would naturally produce that line to "A C," because a reason applied at one point must be applied to another, and by a mathematical calculation Mr. Reddy would have 5000 feet of the ledge. That is what I call a *reductio ad absurdum* of this theory; and let it be borne in mind we shall have nothing from the Providence people that they are entitled to by their patent. If in its construction of the law—your Honor will bear in mind, of course, that from this point of the projection, or proposed end line, this is all outside of the Providence surface boundaries, and goes into the Merrifield, which belongs to the Champion company, and also the Bayard Taylor; but each party is drawing its dip lines, and what are the bounding planes between the two coterminous lines(?) of this lode.

So far as this shaft is concerned, there is but a short distance between the two of them, but it is very natural that when this shaft was run it should not be run in any other direction, for the creek is near at hand. But, however, I do not think the Senator will lay much stress upon that hereafter. But let us concede for the present that it is substantially parallel. We contend that there was so much reserved to us as lay

under our apex, and what was left to the Providence people was what underlay their apex, cut by lines, if you please; and there is a peculiar coincidence, the line "G H" is parallel to the line "D E," which is practically the end line produced. Now, you might say there is a coincidence. That is practically at right angles to the left which would carry, as we say, the true dip, and our contention is that whatever there is in that point, in the triangle here underneath the surface, is the strike of the ledge with reference to the Providence, and not the dip.

I do not like to take up much time, but I would like to refer your Honor to the briefs in this case which will illustrate the whole matter. I just call your Honor's attention to the diagram, and not to the printed matter.

MR. REDDY—That is the diagram in your brief?

MR. LINDLEY—Yes, the diagram in my brief. Now, the question of the trespass that is being committed has been practically correctly stated—that is, I do not admit that it is a trespass, but where the respective parties have driven their levels underneath the surface of the ground. From the 800, 900 and 1000 levels of the Champion mine drifts have been extended in a southerly direction, so that they have penetrated a vertical plane drawn through the extended side lines of the Providence—I will call it the side line. I do not do it for an offensive purpose, but to distinguish what I wish to say; so we have penetrated the side line of the Providence and are working or stoping, or were until enjoined by this Court, stoping out the ground, but that segment of the ledge which

would be cut by vertical planes drawn through the ground of the various parties has not yet reached by some considerable distance the vertical plane contended for by the Champion people. It has extended one of its drifts about 30 feet through a vertical plane drawn through the surface boundaries, what I call the north end line of the Providence—we have extended that drift on the Contact ledge about thirty feet over that, but of course that was a mistake considering the intention of the parties here. It was not my intention to have any work carried on beyond that line, and that was a mistake. Now having crossed the end line contended for by the complainant in this case, we were intercepted by the upward stopes of the Providence, they having stoped up into our drifts, and the two bodies of men came together, and of course the Champion company maintaining its right to stope out the ground—there was no conflict, of course, the Providence people left the drift. Subsequently an injunction *pendente lite* was sued out in this court, whereby the Champion people were prevented from going south-erly to the extreme end line contended for by the Providence people, and the Providence people were put under an injunction from working anywhere north of the line contended for by the Champion company, the Court evidently desiring to protect that segment of the ledge until the extra lateral rights or dip rights of the parties were decided. The Champion works under that injunction have been suspended, except keeping the pump going in order to keep out the water, and keep from drowning out our neighbors and ourselves. Both parties are under injunction, and your Honor is to decide the controversy.

I will endeavor to facilitate the trial of this case as much as possible, and anything which is subject to proof I will admit; and in making objections I will do so without going into any argument at the time.

MR. REDDY—If objection is made, it should be made for all there is in it.

MR. LINDLEY—Well, of course, I will make my objections to the Court, but without any argument.

Now let it be understood that this map represents a stipulation map of the surface lines.

MR. REDDY—Very good, Mr. Lindley. Yes, Exhibit No. 3 is the stipulated map as to the surface lines, and also the lode line and its relation to the others.

MR. LINDLEY—I suppose it may be understood in this case as it was in the Wyoming case, that the Court hears this case as a chancellor sitting as a court of equity, and that the testimony may be taken down in shorthand and thereafter transcribed into longhand and be certified by the Court as the record in the case.

MR. REDDY—That will be the understanding.

Will you admit that the Providence mine was located in July, 1877?

MR. LINDLEY—Yes, sir.

MR. REDDY—And that the ground is properly described in our complaint, and as delineated here?

MR. LINDLEY—Yes, sir; we admit the existing title in the complainant and his co-tenants.

MR. REDDY—And that it was deraigned from the original locators and so on?

MR. LINDLEY—Yes, sir.

MR. REDDY—We will offer the patent in evidence, with your Honor's permission, to show what was granted and reserved.

MR. LINDLEY—No objection.

THE COURT—Let it be marked "Complainant's Exhibit 5."

MR. REDDY—I desire to offer in evidence the following from the petition for the transfer of this case from the State to the United States Circuit Court, as an admission by the defendant in this case: "The following are copies of the 'mineral locations under which petitioner claims and has claimed ground.'" First, there is a notice of location. I believe this is of the New Year's ground.

I also offer in evidence the notice of relocation of the New Year's mine—the first that I offer is on Page 19 of the petition; and the next is the relocation of the New Year's mine, beginning on page 21. The next is the notice of location of the New Year's Extension, beginning on page 24; the next is a notice of relocation of the New Year's Extension. That is the one claimed, as we understand now, which is in conflict with the Providence, the others having been abandoned by this notice, and I will read it, or so much of it as will show the abandonment.

MR. LINDLEY—I think you had better read the whole of it.

MR. SMITH—Very well.

(Reads notice of relocation above referred to, commencing on page 26 of the document above referred to.)

MR. LINDLEY—I object formally to the introduction of the record. I do not think it is evidence in the case, and I object simply to its form.

THE COURT—Let the objection be noted.

MR. LINDLEY—We will admit that wherever these locations were made by the agent he had the power to do it.

THE COURT—Let that admission be noted also.

MR. REDDY—We offer in evidence the map attached to the petition, for the purpose of showing the position and contention of the defendant at that time.

THE COURT—Any objections?

MR. LINDLEY—No; nothing more than the formal objection. I don't think we have changed our base any since that was put in.

MR. REDDY—We wish to put in evidence paragraph 3 or subdivision 3 of page 29 of the petition, which reads as follows. Is there any objection to it?

MR. LINDLEY—Only the general objection. Will you admit that that states the fact?

MR. REDDY—No, sir, I am taking it as an admission to show your position.

MR. REDDY—(Reading). "Traversing said ground of
" petitioner through that portion thereof designated on
" said plat as 'New Year's Relocation', and 'New Year's
" Extention', and passing into and through said Provi-
" dence ground is a lode or vein of quartz, the location
" of which with reference to its apex and general di-
" rection on the course of the vein is correctly deline-
" ated on said map or plat by a dotted black line
" marked 'B-B-B'".

And we offer this to show that the defendant did rely upon the relocation, and has throughout all of the answer relied upon that relocation as the basis of his title.

I would also like to offer a portion of paragraph 7, on page 32; and we offer all of this, if your Honor please, to prevent any change of question. I apprehend that a party cannot bring a case into this court upon a Federal question and then change the question.

"The petitioner on its part in good faith claims
"and at the trial of said action will claim that the
"true construction of said Acts of Congress limits the
"lateral right of said plaintiff to a vertical plane
"drawn through line D-D-D. That petitioner having
"also the apex and outcrop of said vein within
"the lines of its ground 'New Year's Extension' and
" 'New Year's Relocation', said petitioner has the right
"under the true construction of said Acts of Congress
"to extract all the ore found in said vein and encountered
"north of the vertical plane drawn through the
"line D-D-D, and in the exercise of such right petitioner
"is under the true construction of said Acts of
"Congress authorized to penetrate and pass through
"the vertical plane drawn through the line C-C-C,
"and to extract all the gold-bearing ore found in said
"vein which lies between said vertical planes drawn
"through said lines C-C-C and D-D-D."

MR. LINDLEY—Those lines are represented by this line (indicating on map), this being the triangular section of the ledge specified.

THE COURT—Yes, sir, I understand.

MR. REDDY—We also offer this evidence to show that Vincent, who was the locator of the New Year's Extension relocation, was authorized to make that relocation on the part of the company, but I believe that also is conceded, however.

THE COURT—That presumption obtains from the face of the notice itself. There is no controversy about that; it is admitted.

MR. REDDY—We offer in evidence the notice of location of the Annex mine.

(Marked "Complainant's Exhibit 6.")

MR. LINDLEY—That is objected to as irrelevant and incompetent.

THE COURT—Let it be admitted, subject to the objection.

MR. REDDY—This notice of location contains also a diagram showing the location of the Annex mine to the Providence mine. We will also offer the notice of location of the Twin mine.

MR. LINDLEY—The same formal objection.

THE COURT—Let the objection be noted.

EXAMINATION-IN-CHIEF OF

W. F. Englebright, called, sworn and examined for complainant.

MR. REDDY—Q. Mr. Englebright, you have been introduced to the Court, I believe, in a case which has been just concluded?

THE COURT—Yes.

MR. LINDLEY—He is perfectly competent to testify as an expert, and we will admit that.

MR. REDDY—Mr. Lindley, will you admit that that map, Exhibit 1, is correct, our map marked "Exhibit 1?"

MR. LINDLEY—If Mr. Englebright says it is, I will.

MR. REDDY—Q. Is it correct, Mr. Englebright?

A. Yes, sir, it is practically correct.

MR. REDDY—Will you also admit that “Exhibits 2 and 3,” are correct?

THE WITNESS—Yes, sir, they are correct.

MR. LINDLEY—I will admit that they purport to represent the surface boundary lines of the property before the Court, and that this map is stipulated and agreed to be a correct delineation of the surface boundaries of the property set out in the pleadings in this case.

MR. REDDY—Q. Now you may put up the other map, Mr. Englebright, and we will proceed. Exhibit No. 4, is that correct, Mr. Englebright?

A. It is not marked Exhibit 4.

Q. Well, it will be, and we may regard it as No. 4.

A. This is a correct map.

Q. Can you point out the surface there, the croppings of what is called there by the defendant the Contact, and what is called by the complainant the Ural or Back ledge? we will call it the Back ledge for short.

A. Well, I will mark it on.

Q. If you please. A. That is it practically.

Q. Have you traced it further than that?

A. To trace it further than that I will have to theorize.

Q. Point to Peck's ravine, if you please.

A. It is marked on the map here with the words “Peck's Ravine.”

Q. And that vein crosses Peck's ravine?

A. Not to my idea.

Q. Well, I mean on the surface.

A. I have never seen it crossing.

Q. Have you made such an examination such as would enable you to state whether it does or not, whether it is exposed or not?

A. Well, I have examined as close as I could.

Q. Will you state whether you observed any such vein crossing that? A. Well, I found a number of seams, and little indications.

Q. I am speaking about the ledge.

A. Not a positive vein.

Q. Did you see the marks there extending across the ravine?

A. No, sir, I have not.

Q. What is the depth of Peck's ravine in the vicinity of where that ledge would cross, if it should cross it?

A. Oh, it is covered there with more or less surface debris.

Q. Well, from the bottom of the ravine up to the western bank, what is the distance or height? A. Oh, it varies.

It is a sort of steep ravine.

Q. But how many feet; about how many feet?

A. I don't exactly understand the question?

Q. Well, you know the bed of the ravine, and you know the western bank; now, what is the difference in elevation between the top of the western bank and the bed of the ravine?

A. Well, in some places the bank comes right down to the ravine on a gradual slope, and in some places it is 10 or 12 feet high.

Q. Can you point out the 600 feet level of the Providence mine?

A. The 600 foot level on the back ledge?

Q. On the Contact vein?

A. Yes, sir. The Contact vein is marked in orange color, and it is at the mark "600 ft. level."

Q. Where does it extend? Run your pencil over it?

A. Well, it extends from the point 50 to the point 60.

Q. That is on the Contact vein, is it? A. Yes, sir.

Q. Have you examined the vein on that level?

A. Yes, sir.

Q. How far does it extend on that level?

A. Well, there is a drift on it all the way.

Q. A drift on the Contact vein all the way?

A. Very close to it. There is sometimes slabs—

Q. Is there any upraise from 600 foot level?

A. Yes, sir; there are a number of upraises, but I have never surveyed but one of them.

Q. Which one of them did you survey?

A. I surveyed the one marked from 51 to 52.

Q. I see here what appears to be a cross-cut, another one; which is that, an upraise or a cross-cut?

A. Well, there is an upraise from 53 to 54.

Q. How near does that approach the surface—the top of it?

A. I can't exactly say. Probably 60 or 75 feet. Mr. Waggoner surveyed that.

Q. 60 or 70 feet from the 600 foot level?

A. No, sir; from the surface. Mr. Waggoner can give the measurements of it.

Q. How near does the other upraise approach the surface; 51 to 52? A. About 46 feet.

Q. Within 46 feet of the surface?

A. Yes, sir; perpendicular.

Q. Where would that come out on the surface, following the incline of the ledge as developed in that upraise? A. At about the point "C."

Q. Now between 52—did you mark this upraise?

A. Yes, sir; that is from 53 to 54.

Q. You said that approached within about 70 feet of the surface, did you not?

A. Somewhere in that neighborhood.

Q. Where would that come out if continued to the surface?

A. Well, I have estimated that it would come out right here, in Peck's ravine.

Q. In Peck's ravine?

A. Yes, sir; in the bottom of it.

Q. How far would that be from the side line—this line of the Providence? (Indicating on map.)

A. That would be a good many feet.

Q. About how many?

A. I can tell you with the scale. It would come out about 270 feet.

Q. East or west of the—

A. (Interrupting.) East of the west side line.

Q. East of the west side line of the Providence?

A. Yes, sir.

Q. That is to say, we call it the side line. How near does that drift go to what we call the north end line of the Providence—the northerly end line of the Providence; how near does it approach?

MR. LINDLEY—Identify the line you refer to by numbers so I can know what you refer to.

THE WITNESS—You mean the line "C B"?

MR. REDDY—Yes. How near does the drift approach that end line? A. The dotted line?

Q. Yes. A. It approaches within 60 feet.

Q. You don't know when that drift was run, do you? A. I cannot fix the date, no.

Q. Can you tell about what year?

A. It is a good many years ago.

Q. Well, about what year? Give us your recollection. Look back to the Wyoming suit, and you may state from that.

A. Well, it was prior to that.

Q. Do you know what year that was in?

A. No, sir; I do not.

Q. Give an estimate of the time; was it five, six, eight or ten years ago?

A. Well, it must have been about 1880, or somewhere along there—1881.

Q. From the position in which you found the ledge on the 600 foot level, and the measurements which you have made, if the ledge continued in its course, would it depart from either of the side lines of the Providence location?

MR. LINDLEY—Wouldn't it be better to ask him where it would depart?

MR. REDDY—Well, that is assuming that it would depart, which is against our contention.

MR. LINDLEY—I will submit that the witness may state where he believes it would go from the underground workings.

MR. REDDY—Then I will change the question to the form you have used.

Q. If that ledge should reach the surface, at what place would it reach it from the measurements you have made, and what you have seen on the 600 foot level and on the surface, and all you know or have seen concerning the ledge, the top or apex of it, I mean?

A. Well, the surface in that vicinity is considerably mixed. Underground we have a slick, clean cut contact vein; crosscuts coming through the granite, and slate being the west foot wall. On the surface there seems to be an intrusion of slate rock which mixes the surface indications up until it is pretty hard to follow, and the best I could do, after tracing that vein and leaving the point marked 55, where there is croppings at the rear of the Providence chlorination works—we traced up that ravine, and I found little seams in the bottom of the ravine between 55 and 56, and then up at the point marked "falls," at 57, I found a seam which is evidently what we call a cross-course, which runs in a northwesterly direction and following underground in the 600 level from 51 through to 53 and 60 we find that turn in the vein, and that would naturally throw the croppings as I show on the blue line, in that direction.

Q. How far can you trace the croppings along that blue line on the surface?

A. I cannot trace the croppings on the surface. I am not geologist enough for that.

Q. Are there any croppings on the surface?

A. You find croppings at the point 55.

Q. Will this view assist you any in showing the croppings and showing just how far they extended to the south?

A. Well, this photograph is a view showing Peck's ravine near the center of the picture. The chlorination works of the Providence is shown here in this picture here where the smoke is coming out of the chimney. The croppings are shown right on the edge of the building there.

Q. How far is that from the north end line?

A. About 100 feet.

Q. Is it marked on that photograph?

A. Two points are marked on this photograph by two crosses.

Q. And what is that calculated or intended to show?

A. It shows the point "P. Co. No. 11," and "P. Co. No. 12." The crosses are in ink.

Q. Are there any points between those? Are there any places between those two points where the vein croppings is exposed, or the Contact in which the vein lies?

A. On that line?

Q. Yes. A. No, sir; not exactly on that line.

Q. Well, near that line?

A. The Champion company sunk a little shaft through the tailings there, and uncovered some croppings right near that point "C."

MR. REDDY—We will offer this photograph in evidence if your Honor please.

THE COURT—Let it be marked.

(The photograph referred to is here marked "Exhibit 8.")

MR. REDDY—Q. Will you point out the Champion shaft on the map "Exhibit 4"?

A. The Champion shaft is the dark blue line with little black lines in a slanting direction, from points 57 to 58—that is, the shaft is really now 200 feet deeper.

Q. Have you been on the 8th, 9th and 10th levels?

A. Yes, sir.

Q. Did you make an examination there?

A. Yes, sir.

Q. Did you discover whether any rock had been stoped out? A. Yes, sir.

MR. LINDLEY—We will admit that it was stoped out as represented on this map, or practically so.

MR. REDDY—Q. What number of tons was abstracted from there?

MR. LINDLEY—We object to that. We admit that it was actual, and valuable.

THE COURT—I think that question is immaterial as to the exact amount.

CROSS-EXAMINATION OF W. F. ENGLEBRIGHT.

MR. LINDLEY—Q. Do you know of a perpendicular shaft that was sunk in Peck's ravine, or near Peck's ravine?

A. I know of one being sunk in Peck's ravine as shown on this map.

Q. Whereabouts?

A. A little to the east of Peck's ravine.

Q. Where? A. At or near point 54.

Q. Does the word "shaft" there indicate it?

A. Yes, sir.

Q. That is the shaft referred to? A. Yes, sir.

Q. Were you ever in that shaft? A. No, sir.

Q. You never were? A. No, sir.

Q. Do you know of the claim adjoining the Providence upon the west called the West Providence?

A. Yes, sir.

Q. Do you know whether the existence of that Contact ledge is disclosed in the West Providence?

A. No, sir; I do not.

Q. Did you ever make any examination for that purpose, for the purpose of ascertaining whether it did or not?

A. No, sir; I did not. That is all slate country there.

Q. This country is all slate and granite?

A. Yes, sir; slate on the east and granite on the west.

THE COURT—Q. Slate footwall and granite hanging-wall? A. Yes, sir.

MR. LINDLEY—Q. The drift you spoke of as the 600 foot level, running in the direction of point 50, does not cross a vertical plane drawn through the Providence surface line, does it? A. No, sir.

Q. There is considerable stoping done above the 600 foot level, is there not?

A. Yes, sir; a large amount of stoping.

Q. Did you survey the line of those stopes?

A. No, sir.

Q. Nor the trend of those stopes? A. No, sir.

Q. You did not? A. No, sir.

Q. What is this delineated here?

A. That is a cross-cut from the Providence shaft.

Q. Upon what is the Providence shaft sunk?

A. On the granite vein.

Q. And this cross-cut is through the country rock to the Contact vein? A. Yes, sir.

Q. What is the average distance on a horizontal between the two veins?

A. About 500 feet or 600 feet.

Q. And this 1250 cross-cut is another cross-cut?

A. Yes, sir.

Q. From another level of the Providence?

A. Yes, sir.

Q. Back through the granite?

A. To the contact.

Q. To what is called the 1250 level of the Providence in the Contact? A. Yes, sir.

Q. You are satisfied that the Providence—that the New Year's Extension—or what we call the Contact ledge crossed the line approximately at the point indicated in the creek there? A. Yes, sir.

Q. You know the work done by the Champion company to uncover that ledge, do you not?

A. Yes, sir.

Q. And the croppings are also shown at the hoisting works?

A. Yes, sir, practically so.

MR. LINDLEY—That is all, I think.

(Recess until 1:30 P. M. this day.)

Monday Afternoon, May 28, 1894.

1:30 P. M.

MR. REDDY—May it please your Honor, counsel for defendant has kindly consented to allow me to examine Mr. Englebright awhile further in chief on one or two points that I omitted.

THE COURT—Very well.

MR. REDDY—I didn't know at the time he was on the stand that counsel would contend that the vein went outside of the side line.

RE-DIRECT EXAMINATION OF W. F. ENGLEBRIGHT.

MR. REDDY—Q. Look at that model, Mr. Englebright. Did you make that? A. Yes, sir.

Q. Does it correctly represent what it purports to show? A. Yes, sir.

Q. Point out the main features. Show the Champion shaft.

A. The Champion shaft is the line in blue from 57 to 58.

Q. The levels from that shaft are the same as those on the map, are they? A. Yes, sir.

Q. Show the 600 foot level on that model.

A. The 600 foot level of the Providence on the Back vein?

Q. Yes.

MR. LINDLEY—We will understand that the Back vein is the same as the Contact, and this is the foot-wall of the same ledge.

MR. REDDY—Yes, sir.

THE WITNESS—It is shown on this model from 50 to 53, the same as on the map.

Q. Are there any upraises indicated on that model towards the surface?

A. There are two shown on this model; one from 51 to 52, and the other from 53 to 54.

Q. Did you measure that upraise, or either of those upraises? A. The one from 52 to 53.

Q. How far does it extend towards the surface?

A. I don't know exactly. I will have to scale it.

THE COURT—You can measure it right here.

A. Within about 100 feet from the surface, on the slope.

MR. REDDY—Q. How far does it extend up on the level?

A. Well, that is where I surveyed to, about 140 feet.

Q. Is that the one you stated extended up to 46 feet of the surface?

A. Well, that was about 46 feet from the surface, vertically.

Q. And your measurement now is on the incline?

A. Yes, sir.

Q. Is that upraise within the walls of the vein?

A. Yes, sir.

Q. Is the entire vein cut out between the walls in that upraise?

A. That was stoped when I was there—working in stopes.

Q. Well, is the vein wider than the shaft, or upraise; did they take out all of the vein going up?

A. Yes, sir, they took out all of the vein going up. I don't remember exactly. It is a good many years ago since I measured it.

Q. Did you measure this from '53 to '54?

A. No, sir.

Q. You didn't measure that yourself?

A. No, sir; that was put on this model from surveys made by Mr. Waggoner.

Q. Can you point out Peck's ravine on the model?

A. Peck's ravine is shown approximately by a light blue line here.

Q. Is the view in Peck's ravine such as to enable one to determine whether that vein comes to the surface or not in Peck's ravine, or in the vicinity?

A. I couldn't make a very thorough examination there.

Q. You have traced this up to within 100 feet of the surface on the slope of the ledge? A. Yes, sir.

Q. Now, if it continued on that slope up to the surface, where would it come out with reference to Peck's ravine—to the west or the east?

A. It would come out to the east of Peck's ravine.

Q. Did you say you had found croppings in Peck's ravine?

A. No, sir; I found some seams there that might have been veins.

Q. But whether it was this vein or not you couldn't say? A. I couldn't say.

Q. I believe you have already stated that this model is correct? A. Yes, sir.

MR. LINDLEY—Q. Drawn to a scale?

A. Yes, sir; it is on a scale of 60 feet to the inch. I don't know whether I used the scale there or not. I made a mistake on that. It is 140 feet on the slope. I said 146 feet on the slope, and it is 140.

MR. REDDY—Q. Would the corrected statement now as to the distance make any difference where it would come out, with regard to Peck's ravine?

A. No, sir; it would make no difference.

MR. REDDY—That is all.

RE-CROSS EXAMINATION OF W. F. ENGLEBRIGHT.

MR. LINDLEY—Q. What are the points of the compass with reference to the way this model lays; which is north, and which is south, and which is west?

A. Well, generally speaking, this is the——

Q. (Interrupting)—Will you indicate by an arrow upon the bottom level there? A. That is approximately north and south, the arrow that I have marked there.

Q. And here is the extreme westerly terminus of the Providence? A. Yes, sir.

Q. This line is red at the extreme west of the model is the line of the Providence? A. Yes, sir.

Q. Will you indicate upon the model what line that is by the numbers on the map?

A. Well, it is the line from "P. Co. 12" to "P. Co. 13".

Q. I want you to indicate it by arbitrary numbers. A. Well, from 12 to 13.

Q. Referring now for a moment to the model, where was that perpendicular shaft sunk?

A. Right over 54, or nearly over, just a little to the west of it. The shaft was intended to be sunk to meet the raise.

Q. Intended to be sunk to meet the raise?

A. Yes, sir.

Q. And that it would meet it at about 80 feet, was that the intention? Did you make any personal calculation as to where that upraise would meet the perpendicular shaft?

A. Simply from the surveys of Mr. Waggoner.

Q. Mr. Waggoner made a survey and you took a cross-section at that time? A. Yes, sir.

Q. Very well. Now this model does not indicate the existence of any stopes?

A. No, sir, I didn't survey the stopes.

Q. Who did survey them?

A. I don't know who has.

Q. In the Providence?

A. I never have surveyed them only partially here, when they were started on this level up a little ways.

Q. I find delineated here upon the map a green line. What is that line as indicated upon that map, and please give the numbers of it?

A. It is the line "E C D" on the map.

Q. How would that line correspond as to its course—I mean a line through which a plane is drawn, with the north line crossed by the granite ledge?

A. That is intended to be parallel.

Q. It is intended to be parallel with the north line of the granite ledge? A. Yes, sir.

Q. And applied at the point where the Contact ledge crosses the Providence line? A. Yes, sir.

Q. What is the line indicated in red?

A. Well, it is the line "A C B" on the map.

Q. That is the line which the Contact ledge crosses produced? A. Yes, sir.

Q. And this represents where a vertical plane drawn through that line would cut the ledge in its downward course? A. Yes, sir.

Q. That is a red line. Then the segment in controversy between the parties is shown upon the model as lying between the red and green lines?

A. Well, between the line "C B" and "D C."

Q. Have you ever determined—have you the field notes giving you the strike of the Contact ledge where it crosses the Providence line?

A. No, sir, I have not.

Q. Do you know what its general course is?

A. Northerly and southerly right there.

Q. Which of the two lines approximate a right angle to that ledge on its course?

A. The green line.

MR. REDDY—You mean the Contact?

MR. LINDLEY—Yes, sir, I am speaking of the Contact vein. I might ask a general question—I suppose counsel will admit that these ledges are two distinct ledges?

THE COURT—The granite ledge and the Back ledge or Contact ledge.

MR. REDDY—The granite ledge is not involved, and in that view we will admit they are separate and distinct ledges. We believe they are.

MR. LINDLEY—The granite ledge is the ledge that was described in the patent.

MR. REDDY—The granite ledge was described in the patent.

MR. LINDLEY—Q. And they practically descend into the earth on parallel planes?

A. There is no sign of any junction between them at the present time. They are practically parallel at the present time.

Q. They are practically upon parallel planes descending into the earth? A. Yes, sir, as far as they are worked.

Q. Now, are there any underground workings of the Champion Mining Company—no, there is one line I have not asked him about. There it is, a dotted red line. Will you please put a corresponding number on the model?

A. Well, that is "P. Co. No. 11".

Q. Take arbitrary numbers. Can you not put arbitrary numbers on the models? A. I have marked on the model the numbers 62, 63 and 64, and marked the map the same.

Q. What does that dotted red line indicate, now numbered by you as stated? A. A line vertically under the Providence patent surface lines.

Q. A line drawn through a vertical line—that is a plane drawn through a vertical line extended in its own direction downward? A. Yes, sir.

Q. Then if vertical planes are to be drawn through the Providence surface lines, the line indicated on the model, 62 and 63, being a dotted red line, and the line 62, C, 12 would be the extension of vertical planes drawn through surface lines of the Providence surface boundaries? A. Yes, sir.

Q. To what extent, if any, has the underground working of the Champion Company crossed the surface line, or that surface plane, rather, where it intersects the Contact ledge upon the footwall as shown in the model?

A. Well, the map shows that a little closer to scale than what the model does.

Q. Well, then, testify from the map.

A. On the No. 8 level it has passed about 65 feet south of the Providence surface line.

Q. Are there any stopings between the vertical plane drawn through the line 62 and 63 southerly beyond that plane? A. There is a small stope.

Q. Did you give the distance which the 800 level of the Champion company had penetrated and passed through that plane?

A. Yes, sir; 65 feet.

Q. The lines indicated, or the material of the model indicated in yellow, are what?

A. Are Providence workings.

Q. Providence workings on what ledge?

A. Well, on both the granite ledge and the Contact ledge.

Q. Both the granite and Contact?

A. And the cross-cuts connecting the same.

Q. Now let us be particular. The line upon the model, and also indicated upon the map as the line starting down into the earth from the Providence hoisting works follows, does it not, the footwall of the granite ledge? A. Yes, sir.

Q. At the 600 level we find running back to that ledge what you might call a cross-cut? A. Yes, sir.

Q. Does that follow any vein? No, sir.

Q. It is country rock from the time it leaves the shaft until it reaches the Contact vein or the Back vein on its course? A. Yes, sir.

Q. All in granite? A. Yes, sir.

Q. What have you to say with reference to the cross-cut at the 1250 level? A. The same.

Q. It is run entirely through the country rock until it strikes the Contact? A. Yes, sir.

Q. It comes up against the slate footwall?

A. Yes, sir.

Q. The triangle as shown upon the model, marked "C B D" indicates the segment of the Contact ledge between the bounding planes that are contended for in this action? A. Yes, sir.

Q. With the dotted red line intervening, showing where a vertical plane drawn through another surface boundary of the Providence would intersect the Contact ledge? A. Yes, sir.

THE COURT—Any further questions of this witness?

MR. REDDY—Just one further question.

Q. Mr. Englebright, is the line "C D" the same as the line "E C?"

A. No, there is a difference of two degrees in the lines.

MR. LINDLEY—Q. Well, that is the difference of connecting a hole and a boulder on the creek, is it not?

A. No. The south line of the New Year's Extension claim is given in the surveys as north 75 degrees east, whereas the surface line of the Providence mentioned, from 62 to 63, is nearly 73 degrees east, and the line from C to D is struck parallel with that line.

Q. As a matter of fact, are they not parallel, or within a few minutes of parallel, connecting the natural points called for in the surveys?

A. I can't say that they are.

Q. Well, that is a proposition I am not going to quibble over. Do you speak in reference to the direction of these lines as to the calls and course and distance of the surveying? A. Yes, sir.

Q. Or connecting the different points with monuments or fixed objects that were placed upon the ground at the time the survey was made?

A. On the point E and point C there is no fixed monument on the ground.

Q. Speaking of the Providence survey?

A. I am speaking of the New Year's survey; at the point E and point C there is no fixed monument on the ground. At the point 62 there is a fixed point. At the point 63 there is a point that can be identified from a witness tree.

Q. Do you connect in giving the course of that line the calls of the patent, or the natural monuments?

A. At this point (indicating), with the monument on the ground.

Q. On the ground? A. Yes, sir.

EXAMINATION-IN-CHIEF OF W. W. WAGGONER.

MR. LINDLEY—We will admit Mr. Waggoner's competency.

MR. REDDY—Q. You have been on what is called the 600 level of the Providence mine, have you not?

A. I have.

Q. Now, turn to the model, please. Did you survey the upraise from that level?

A. Yes, sir; I did.

Q. Please name it.

A. This upraise from 53 to 54?

Q. What is the distance from that level to the top of that upraise? A. 275 feet.

Q. What is that upraise made in, between walls?

A. Between walls.

Q. How far is it from the top of that upraise to the surface, if you know, continuing on the same angle?

A. Ninety feet.

Q. Point out on this model Peck's ravine.

A. Here it is, following right up through here (indicating).

Q. If that upraise was extended to the surface, where would it reach the surface with reference to Peck's ravine?

A. It would come within Peck's ravine.

Q. How far from Peck's ravine to the side line of the Providence—that is the side line, isn't it, as you understand it?

A. Yes, sir.

MR. LINDLEY—Identify that line.

THE COURT—The red line at the top of the model.

MR. SMITH—Between the numbers 12 and 13.

MR. LINDLEY—Of course the use of the terms "side line" and "end line" may be a little confusion.

THE COURT—Well, we will get it at that way. Mark from "P. Co. 12" to "P. Co. 13."

MR. REDDY—Q. How far is it from the bed of Peck's ravine to the line indicated?

A. 270 feet.

Q. Now, in order to come to the surface outside of this line, at what angle would the ledge have to run to reach the outside?

MR. LINDLEY—Taking into consideration the general conformity of the country, or on a plane, as if the mountain was cut down.

MR. REDDY—On a plane, as if the mountain was cut down.

A. You would have to run off here flat, say at an angle of 25 degrees.

Q. You would have to turn and go at an angle of 25 degrees?

A. Yes, sir.

Q. Is this running on slate as a footwall and granite as a hanging-wall?

A. Yes, sir.

Q. Now, in order to go at an angle to carry it on the line we have spoken of it would have to cut through that belt of slate, wouldn't it?

A. Yes, sir.

MR. LINDLEY—Q. What is the angle of the contact there?

A. The angle of the contact in here is about 41 degrees.

MR. REDDY—Q. Now it would be necessary for the vein to pursue an incline which would carry it beneath Peck's ravine, wouldn't it?

A. It would. The tendency of this upraise at the upper end was to straighten up, and the angle is nearly 50 degrees, the pitch of the vein at the upper end where you left off.

Q. Have you a map showing this same proposition?

A. I have.

MR. REDDY—We will ask that the map be marked in the regular order, if there is no objection to it?

(The map above referred to is marked "Complainant's Exhibit 9.")

Q. Mr. Waggoner, please explain this map to the Court, Exhibit No. 9.

MR. LINDLEY—Let it be understood, Mr. Reddy, that this matter, so far as the respondent is concerned, is generally objected to, because we have no particular concern with it, and we enter the general objection that where that ledge goes after it leaves that line is a matter that does not affect us.

THE COURT—I will admit it, because the other parties claim that it has some relevancy; but its relevancy will be determined when we dispose of the merits of the controversy.

MR. REDDY—Here is a map that shows the course of the vein, but I am perfectly willing to stop right here, and say we know nothing about the vein beyond that point—that is, as to its course. That, of course, would leave it within our line. If counsel is willing to leave it there, that, of course, will save some time.

THE COURT—I guess you had better go on.

MR. LINDLEY—Yes, I think you had better go on. Both parties have argued about the course and departure of that vein, and there are some briefs here that I do not want to alter or retract anything I have said. Inasmuch as we have both illustrated by hypothetical illustrations the course of that vein, it might be instructive to allow counsel to proceed, but I do not think it is material to respondent's case. If you want me to admit that possibly it may go through that end line—

MR. REDDY—No, I don't want that.

Q. Now, will you please explain that map to the Court?

A. This map marked "Complainant's Exhibit 9" is a section of the air-shaft upraise marked 53 to 54, and has a length of about 275 feet. It was estimated that it required 90 feet to come to the surface at Peck's ravine.

Q. And that distance you have already given?

A. Yes, sir; as 90 feet. This upper black line shows a profile of the surface of the ground.

MR. LINDLEY—Q. Does this indicate here Peck's ravine?

A. Yes, sir; 56 represents Peck's ravine. From the surface a perpendicular shaft was sunk, and I will

mark that 80. From 80 a perpendicular shaft was sunk 50 feet deep, intended, if continued, to intercept this upraise.

Q. Now the other map, "Exhibit 10," explain that.

A. Exhibit 10 represents a cross-section of the Providence shaft, and also shows a cross-cut on the 600 foot level, and a cross-cut at the 1250 level, and the upraise between slate and granite as surveyed by Mr. Englebright; and the dotted blue line showing the probable continuation of that contact to the 1250 level.

Q. The 600 level cross-cut extends through from the Providence shaft through the granite to a Contact ledge?

A. Yes, sir.

Q. And again on the 1250 foot level another cross-cut has been run from the Providence shaft through the granite and encounters again the Contact ledge?

A. Yes, sir.

Q. And the line which you have dotted there indicates the course of the incline of the vein from the 600 to the 1250?

A. It does, as far as the footwall. There has been a chute made from the 1250 level following up the Contact.

Q. Since the action was commenced?

A. Yes, sir; since the action was commenced.

Q. When you speak of the footwall, how wide is the ledge? Do not the openings on that ledge take out the entire ledge, or include the entire ledge?

A. Not altogether.

Q. Well, as a rule, generally speaking. Now, what is the dark blue line?

A. That is the upraise.

Q. Mark it the same as the other numbers you have.

MR. SMITH—51 and 52, 51 being the bottom of the upraise.

MR. REDDY—Q. What is this red line here; what does this heavy red line indicate?

A. That is on the map underneath. That is on the boundary line between the Providence and New Year's.

Q. What is the course of the red line to which I am pointing? A. South, 43 west.

Q. And the dotted line is a continuation of that?

A. Yes, sir; it is a continuation of that plane.

MR. LINDLEY—Q. Continuation of that line?

A. Yes, sir, a continuation of that line.

CROSS-EXAMINATION OF W. W. WAGGONER.

MR. LINDLEY—Q. You surveyed the stopes upon the Contact ledge on the Providence 600 level, did you? A. No, sir.

Q. There has been some considerable stoping done out of there, has there not? A. I don't know.

Q. You don't know?

A. Of my own observation.

Q. I notice on the model, after you pass to the west of the indicated Peck's ravine, and when you get to the green mark that your footwall country falls away something at a lesser angle than that shown on the main portion of the model? A. It does.

Q. It does fall away? A. Yes, sir.

Q. Have you got the angle?

A. That was intended to be sunk near the exact elevation above the creek.

Q. Then if that upraise had been extended on the footwall up through Peck's ravine, and had followed the contour of the footwall as indicated upon the model, the angle of approach to the surface would be less after it passed Peck's ravine than it is shown below? A. It would.

Q. Did you study the conformity of the country there as to the elevations and rapidly-rising hills, to determine and allow for that surface condition, in determining where the probable outcrop of that vein was upon the surface?

A. I had better data in this upraise coming up there.

Q. So far as the upraise went. Of course, if the hill was cut off at a point on a level with Peck's ravine you would have a typical ravine of the footwall of that vein coming to the surface upon the angle of the upraise, but beyond that point are you taking into consideration the abrupt rise of the country as affecting the probable situation of that vein?

A. Well, the tendency of this upraise on the vein is to straighten up.

Q. But you have indicated—beyond Peck's ravine to the west you have indicated a much flatter country?

A. I have.

Q. A difference in the angles there as it approaches the surface, and that would have a tendency, wouldn't it, to throw the apex of the vein some considerable distance further to the west than it would if the upraise was continued upward at its own angle?

A. The vein, if continued on its present pitch, would come out within Peck's ravine.

Q. And if it flattened? A. If it flattened very materially it might lay right along the surface of the ground, forming a blanket.

Q. Is this section of the country indicated on the upper portion of the model, and painted a bluish color, does that correctly purport to indicate the extension of the footwall below. A. It does.

Q. And you say that flattens down at a much less angle than it pursued up to Peck's ravine?

A. At the surface it does.

Q. Then if those conditions really existed, the upraise would show an angle considerably flatter above Peck's ravine than it shows below?

A. Most assuredly.

Q. Why didn't you survey these stopes? Didn't the stopes indicate the general trend of the ledge in its upward direction?

A. Why I made these surveys was to make these connections, and I had no orders to go to any place else.

Q. Didn't you think the existence of those stopes and the trend of the ore bodies as shown by the miners' work in stoping out the ore would indicate about the probable course of the vein above the level from which the stoping was started?

A. This upraise was carried on the vein, and carried beyond in stoping.

Q. Along the upraise in the direction you go are stopings?

A. Yes, sir.

Q. That is the upraise that was made to connect with the perpendicular shaft?

A. Yes, sir.

Q. Or to connect with it the perpendicular shaft was sunk? A. Yes, sir.

Q. For which the perpendicular shaft was sunk?

Q. I want to be certain about what we are now approaching west of Peck's ravine, where the country seems to fall away. Does that represent simply the contour of the surface, or does it represent the slate foot-wall underneath the detritus and debris that lies on top of it? A. The contour of the surface.

MR. LINDLEY—I believe that is all.

RE-DIRECT EXAMINATION OF W. W. WAGGONER.

MR. REDDY—Q. You say that the inclination, or the appearance near the top of this upraise 54 was to straighten up? A. Yes, sir.

Q. Indicate with your stick what you mean by straightening up?

MR. LINDLEY—Of course you will remember that we are concerned more with the onward course of the vein.

A. Well, the pitch of the upraise was like this (Indicating).

MR. REDDY—The inclination. The angle here is 41. That stick represents 41.

THE COURT—Q. As represented by the red line?

A. Yes, sir.

Q. Now, when you say it straightens up, what do you mean?

A. At 54 the tendency of the vein was to straighten up, and increase the angle.

Q. Then it would not lie down here (indicating)? It would not have this tendency to conform to this surface here? A. No, sir.

Q. And in order to flatten, to take that angle that you have indicated, 25, it would have to cut right through the country rock, the foot-wall, wouldn't it?

A. It would have to lay flatter.

Q. And unless the foot-wall fell away, the slate, then the ledge, in order to acquire the necessary angle to come out at the point mentioned, outside of the side line, it would have to cut right through the slate, wouldn't it? What would be the variation now, from the angle which you have found in the shaft, and the necessary angle in order to come outside of the outside line of the Providence; how many degrees would it have to change in order to accomplish that feat?

A. It would have to flatten out about 25 degrees.

Q. The difference between 41 and 25—16 degrees?

A. Yes, sir, or 50 degrees at the top.

Q. Well, that is all I want to know on that point.

EXAMINATION-IN-CHIEF OF

John A. Vincent, called, sworn and examined for complainant.

MR. REDDY—Q. Did you ever act as superintendent of the Champiom Mining Company?

A. I was.

Q. The defendant in this action? A. Yes, sir.

Q. In what years? A. From 1887 to 1889.

Q. Were you not the superintendent in 1884 at the time— A. I was.

Q. Were you the relocater of the New Year's Extension? A. I was.

Q. How did you come to make that relocation?

MR. LINDLEY—I object to that. The relocation speaks for itself. We have admitted his authority to make it, and it is the best evidence.

MR. REDDY—And I seek to introduce the evidence for the purpose of showing how he made it on the ground. It is merely preliminary to the next question.

THE COURT—Ask the question.

MR. REDDY—Q. Can you look at this map marked "Complainant's Exhibit 3," and point out the lines of the New Year's Extension relocation, as you name it?

MR. LINDLEY—I object to the question. The instrument itself shows the lines, the notice of relocation signed by Mr. Vincent, which is in evidence here.

THE COURT—Yes, introduced by the parties themselves.

MR. REDDY—But I want to show whether there is a correct representation of it here.

MR. LINDLEY—It has been stipulated by the two parties as being a correct representation. I have admitted it, and that map is a stipulation map.

THE COURT—And there is no controversy about the lines as there represented?

MR. LINDLEY—None whatever.

MR. REDDY—I want to show the lines; what this line here is, the one that runs down from the south end of the New Year's mine to intersect the Providence line.

MR. LINDLEY—There are two lines there, one is the west boundary of the New Year's Extension, and another is on the non-mineral ground entered as a mill-site.

MR. REDDY—But I want to show by this witness that the New Year's as relocated, extended from the south end line of the New Year's mine down to the Providence, and that the mill site was not only abandoned, but expressly abandoned by the notice of location, and the lines established.

MR. LINDLEY—The mill site in this matter cuts absolutely no figure. The lines of the relocation of the New Year's Extension have been conceded by every party to this action. We have conceded the Providence boundary line as they have claimed it. There is no controversy between us on that proposition; and as to where the boundaries lie, and as to what scope to give to the relocation, the instruments offered by the complainants themselves are the best evidence of it.

THE COURT—I think so.

MR. REDDY—Do I understand counsel to say that what is marked there as a mill site is non-mineral?

MR. LINDLEY—It is patented as a mill site.

MR. REDDY—But still it is non-mineral. Very well, then, that is all I wanted to show, that it was non-mineral.

Q. Did you ever have anything to do with the sinking of what is marked on "Complainant's Exhibit 4" as the Champion incline shaft?

A. I laid that shaft out.

Q. State whether you had any directions to continue that shaft from the company.

MR. LINDLEY—I object to that as entirely irrelevant, incompetent and immaterial.

THE COURT—Which shaft is that?

MR. REDDY—That is the Champion shaft. I wish to show—my object is to show that this witness started that shaft, and reported his plan to the Board of Directors, and he stated to the Board of Directors that it was started in that direction so as not in the course downward to intersect our projected end line here, the end plane here; that his plans were approved, and that that was the reason why it came to be parallel; that he started it with that view, and reported his views to the Board of Directors, and they confirmed his views and ordered him to keep on; and I want further to show that he had conversed with Mr. Walrath, the complainant in this case, and his brother, and they called upon him to find out what he was doing with this shaft, and he told them that they would never interfere with this line, and would never cross it, and that it was started in that direction for that reason; and to show, what we stated in our opening statement, that the line was practically and actually agreed upon between the parties.

MR. LINDLEY—I object to the testimony as sought to be developed by this witness, on the additional ground that a corporation acting through a board of directors must preserve a record of their actions, and that if this witness reported to the Board of Directors acting in a corporate capacity, that the Board of Directors must have taken some action upon it, and that action should have been manifested by their minutes of the meeting. The fact that he acted in the ca-

capacity of a mere employee cannot bind the corporation with reference to the conduct of his work upon the mine; that the Providence Mining Company paid no consideration for the conduct of the respondent in the case, they were not misled by any act of the respondent in this case, they suffered no detriment, they were in absolute possession of all the facts the same as the Champion Mining Company were, and the mere direction of the corporation, or its Board of Directors in a verbal way, or any member of its Board of Directors, not sitting and acting as a Board of Directors, cannot be introduced in evidence as an estoppel upon the corporation. The mere fact that that shaft was run paralleling a surface line does not, of itself, prove anything, or estop the Champion Mining Company from asserting anything. The fact is before the Court in its record, that the respondent in this case holds a United States patent, or its equivalent, subsequent, long subsequent to the employment and discharge of Mr. Vincent from the employment of the company, and that it in no way precludes whatever action he may have taken in sinking that shaft upon lines parallel to this line, or in any way affecting the rights that the Champion Mining Company has under its title issued by the Government of the United States. It is entirely irrelevant, incompetent and immaterial. It does not possess one element of equitable estoppel. What did the Providence Mining Company yield for that concession, for the sinking of that shaft parallel to their line? Supposing it was a contention between the Providence and the Champion as to underground matters that we probably never thought of,

and that shaft was sunk in that way, in order to deprive the Champion Company of its property rights as evidenced distinctly by its muniments of title, they would have to have something beyond the mere parol direction of its superintendent by individual directors, unless they sat and acted in a corporate capacity; that the evidence now sought to be adduced is a limitation upon a title, it is sought to be proved exclusively by parol, and touching a section of country outside of the boundry lines of the Providence, outside of any matters that they discovered at the time they were made, and referring to a condition that does not exist, or was not known to exist at the time they were made. It possesses no element of evidence of an estoppel. In order to constitute an estoppel one or the other of the parties should have been in ignorance of one fact or another; there must have been some motive or consideration moving between the parties; there must have been some controversy, whereby the parties being in ignorance of the true state of facts, yielded and surrendered something. In this case they have simply offered to prove the fact that he was instructed by the Champion Mining Company not to cross this line—counsel says this line extended. Supposing he did have that instruction, that cannot limit the legal title of these people to the ground that the Government has granted. You cannot destroy the property of a corporation by any such loose methods. If counsel will attempt to prove that a resolution of the Board of Directors was passed in session, wherein and whereby they declared that the rights of the Providence Company, with reference to not only the surface, but to

the underground portions of this ledge, were to be defined by vertical planes drawn through that line, and that line extended, I will admit it as proper evidence; but a solemn act of a corporation is necessary before you can limit its legal title, and I protest and object against casting any doubts upon the legal rights of the Champion Mining Company by the testimony of a discharged superintendent as to what certain directors told him. I do not think it is fair or right or proper evidence in this case, and this is the first time, so far as this case has progressed, that I have had occasion to object to any testimony that was seriously offered by Senator Reddy, but I think the line should be drawn here. Is he prepared to show that the Board of Directors have estopped themselves by such an instrument, in writing, that the court would control? If he does, then the objection is withdrawn. If he attempts to get out of this witness' parol conversations with the Board of Directors as to how he should extend this shaft, either as a matter of expediency, or either at the time listening to the objections of Mr. Walrath, I say they should be eliminated from this case, and should not be considered by the Court at all.

MR. REDDY—If your Honor please, I do not care to argue that question now; but I suppose it can do no harm to hear the evidence, and then your Honor can exclude it hereafter if you should think it not proper. Of course I can argue the proposition now, but it will take some time, and I will have to go over the same ground hereafter in the argument.

THE COURT (after further argument)—I think it would be better to admit the testimony now, subject to the objection of counsel.

MR. LINDLEY—We except.

MR. REDDY—Q. Now, state what transpired between yourself and the corporation in the matter of planning and doing the work indicated there in the Champion shaft.

MR. LINDLEY—A corporation acts only in one way, and that is by their Board of Directors.

MR. REDDY—Well, I will say the Board of Directors, in open board, while the board was in session, I would say.

MR. LINDLEY—Then the minutes of the meeting are the best evidence.

THE COURT—Of course it is.

MR. REDDY—But they may be bound without writing, we contend.

THE COURT—Well, note Mr. Lindley's objection.

MR. LINDLEY—The records are at the gentleman's disposal. I have examined the record, and there is nothing in it as to the authority of Mr. Vincent to relocate that mine.

THE COURT—I will admit this testimony with the understanding that if it does not come within the rule of law, that it will be excluded.

MR. REDDY—But I understand counsel to contend that a corporation cannot be bound by oral directions to its superintendent in open meeting, or that the corporation is not bound by the act of the superintendent and manager of the concern when they know what he

is doing, when they are advised of his work, and when, after learning of his work, adopting it and ratifying it.

MR. LINDLEY—I take it that in the performance of the function or duties for which he was employed, he can bind the corporation; but counsel has not shown by any evidence here that a mining superintendent has a right to fritter away the rights of corporations as to their bounding planes extending underneath the ground.

MR. REDDY—I shall be very happy to present such authorities upon that point as I may find.

THE COURT—I think it would be safer to take the testimony, and I will pass upon the objection when I pass upon the merits of the case.

MR. REDDY—Q. Then you may go on, Mr. Vincent, and state how you started that work, and how you planned it, and what communications you had, if any, with the board of directors of the Champion Mining Company.

MR. LINDLEY—Were they in writing?

MR. REDDY—No, sir; they were not in writing so far as I know. I am inclined to think they were not.

Q. Now, Mr. Vincent, the Court has given you permission to go on.

A. Well, I was sent up by the board of directors to do whatever work I thought was for the best of the company. I started that shaft down and had it down about 40 feet, and I reported to the board of directors in session about what work I had done, and they calculated to go to work and put up hoisting works and run that shaft down further.

Q. What, if any communication did you make, or was there any communication from the board to you concerning the direction of the shaft, and why any given direction was adopted for the shaft?

A. There was none, but then I reported to the board that such was the case, that the shaft was laid out so it would never interfere with this line.

Q. Anything further? A. That is all.

Q. Did you have any writing from the corporation?

A. No.

Q. What depth did you attain in that shaft when you quit working? A. 540 feet.

Q. When did you quit there?

A. On the 1st of August, 1889.

Q. I say quit—did you quit, or were you discharged?

A. No, I was discharged.

Q. Did you start in on the levels? A. I did.

Q. Any of the levels south?

A. I started all of them south down to 5.

Q. State whether at the time you were sinking that shaft you were called upon by Mr. Walrath, the complainant in this action, or his brother Mr. Richard Walrath, to make any inquiry of you concerning the construction of that shaft and what the intention was, whether to cross the Providence line or not, as marked on the map?

MR. LINDLEY—I object to this. I think this is unfair.

THE COURT—Who was this suit brought by?

MR. LINDLEY—It is brought by one of the co-tenants of the three. The complainant alleges that he is one of the co-tenants, and the right of action has been as-

signed to him by the other co-tenants. Now I submit that it is hardly fair to drag out a party who has refused voluntarily to become a party here, and bind us by his testimony.

THE COURT—I will allow the question.

MR. LINDLEY—We except.

MR. REDDY—Q. Go on with the answer.

A. Well, Mr. Walrath he happened to come along, and he made a remark to me that he wished for us, of course, to keep his line and not to cross it as he didn't want any more trouble as he did have with some other mining properties adjoining; that he didn't want any more holes in his ground, and so I answered him that I would respect his line as long as I am here.

THE COURT—Q. That you would respect his line as long as you were there?

A. As long as I was superintendent of the mine.

Q. Where did this conversation take place?

A. Right on the premises.

Q. You were then acting as superintendent, were you?

A. Yes, sir.

Q. What line was referred to at that time as the Providence line; can you point it out on the map?

A. Yes, sir; it is the line marked "A B" on the map, Exhibit 4.

MR. REDDY—You may cross-examine.

MR. LINDLEY—No questions.

MR. REDDY—The model, if your Honor please? How shall we treat that; shall it be marked as an exhibit?

THE COURT—Let it be marked as an exhibit.

MR. LINDLEY—Let it be understood that all these exhibits are introduced in evidence in connection with the testimony of the witnesses.

(The model above referred to is here marked "Complainant's Exhibit 11.")

MR. REDDY—Can we have an order that the patent that has been introduced in evidence may be withdrawn upon the substitution of a certified copy?

THE COURT—Of course that may be done.

MR. REDDY—That is our case.

MR. LINDLEY—Now, may it be strictly understood between us that the Contact ledge involved in this case is not the ledge that was granted by your patent?

MR. REDDY—You mean the Providence ledge?

MR. LINDLEY—Yes, sir.

MR. REDDY—Of course the patent shows that upon its face.

THE COURT—That the ledge granted by the patent is the granite ledge, and the other one, the Back ledge or Contact ledge is not described in it.

MR. LINDLEY—And that whatever rights you have as to the Back ledge or Contact ledge you acquired by the Act of 1872?

MR. REDDY—Yes, sir.

MR. LINDLEY—I would like to have that stipulation in this case in reference to the title of the respondent. It is stipulated between counsel in this case, by a stipulation made a part of the record for the purpose of this trial that the Champion Mining Company on a certain date, in 1890—shall I read the stipulation?

MR. REDDY—If you please.

MR. REDDY—Of course in making these stipulations the Court and counsel understand that it was simply to avoid the necessity of bringing the officers of the Land Office here, and to cut the matter short it was stipulated.

THE COURT—That is a very proper way for counsel to do, to admit the matter where the fact is known to exist.

MR. LINDLEY—You will also admit that you gentlemen have had full opportunities to enter our mine at all times for the purpose of making your explanations and surveys.

MR. REDDY—It has never been denied.

MR. LINDLEY—And I will state that we have received a similar courtesy from the other side.

THE COURT—Let a note of that be made.

MR. LINDLEY—Well, I want to introduce that stipulation in evidence, and I will do so hereafter if it cannot be found now. I have a copy of the stipulation here, however, and I will read it. (Reads stipulation.) I will now hand to counsel the records of the corporation respondent.

MR. REDDY—Where is that page authorizing the relocation?

MR. LINDLEY—I think it is page 108. The answer in this case has not been called to your Honor's attention, but I will do so now, as it differs somewhat from the answer in the other case. It sets up the facts—after admitting their surface title, it alleges the fact of the existence of what is called the New Year's or Contact lode as passing through the New Year's Extension into the Providence ground, and with the

exception of the extra lateral rights that the Champion company claims, the Providence company has everything else. It may be considered an equity, I suppose, to perform its usual function.

EXAMINATION-IN-CHIEF OF

C. E. Uren, a witness, called sworn and examined for respondent.

THE COURT—I suppose you will admit that Mr. Uren is competent to testify as a surveyor.

MR. REDDY—No question about that.

MR. LINDLEY—Q. You are a mining surveyor, Mr. Uren? A. Yes, sir.

MR. REDDY—I admit it, Mr. Lindley.

MR. LINDLEY—Very well, then; it is admitted.

Will the Clerk please mark these maps Respondent's Exhibit "B," and Respondent's Exhibit "C"?

I believe that where a ledge is shown to pass through the end line, that is a true end line, that it is at least a circumstance from which it might be inferred that that ledge would continue on and pass through the other. It probably is not classed as a presumption, but it is a circumstance from which the Court might under certain circumstances, all other things being equal, infer in favor of the validity of a location to the extent of an extra lateral right, that in the absence of evidence to the contrary a vein once passing through an end line the Court would presume that it passed through the other, unless the contrary were shown. Of course, we take the position that this is not the end line of the location, and that no such assumption could possibly be indulged in in a case of

this kind. Now, let us see what the witnesses know as to the course and trend of these ledges, as developed upon the ground.

Q. Now, I will ask you, Mr. Uren, whether or no you have visited the underground workings of the Providence? A. I have.

Q. For what purpose?

A. For the purpose of making surveys.

Q. I will ask you to examine Respondent's Exhibit "B," and state what it is, eliminating all, of course, that does not pertain to Providence matters.

A. It is a map showing the Champion shaft, levels, all of the accessible stopes; also the Providence shaft, showing the 600 level and the 1250 level, including the stopes and raises on the foot-wall or Contact vein on the 1250 level, and from there to the 600, and part of the stopes on the 600 level on the Contact vein.

Q. What is "Exhibit C," so far as all the lines are concerned except the marks marked in red—eliminating the lines marked in red what is "Exhibit C?"

A. On Exhibit "C" the blue colored lines represent the surface lines of the Providence mine. The surface lines of the New Year's, New Year's Extension and mill site are simply indicated by a line to the north of the Providence—a series of lines.

Q. You are familiar with the ledge that has been mentioned in this case and called the Contact ledge?

A. Yes, sir.

Q. How far can the outcrop of that ledge—or what portion of the outcrop of that ledge is ascertainable from a surface inspection, and what is the general direction, and kindly mark the numbers on this map, specifying the direction in which they go?

A. You mean the surface lines of the Champion, and also of the Providence?

Q. I am speaking of the outcrop of the Contact vein, commencing at point A, which is the point on which the Champion incline shaft is sunk, and follow along a southerly direction, or whatever direction the line of outcrop may take as shown upon the surface; or if you have to go further north to connect with the natural outcrop proceed to do so. The Champion shaft is sunk upon the Contact vein, is it not?

A. Yes, sir; nearly so, or within a very few feet of it. It is out of the foot-wall, if anything.

Q. Now proceed.

A. Commencing at the collar of the Champion shaft at point marked "A," extending southerly to D, as indicated by the blue marks, D is the only place at which it can be found between those two points. On Exhibit "B," at a point which I will mark 22, where the Champion company sunk the shaft in the creek and run a cross-cut on the vein. That point is indicated on Exhibit "C" by the letter D. It is then found at the southwest corner, or northwest corner of the chlorination works of the Providence. From that point on it was impossible to trace it on the surface further south.

Q. What were the indications on the outcrop at that point near the chlorination works?

A. There is an outcrop there of 12 to 14 inches of quartz.

Q. You are familiar with the lines of the New Year's Extension, the northerly and southerly lines, are you not?

A. I am, yes, sir.

Q. Are those lines parallel? A. They are.

Q. Does the Contact ledge cross both of those lines?

A. It does.

Q. Now I will ask you to go to the map marked "Exhibit B," and refer particularly to the 600 foot level of the Providence mine. Is this map made from actual surveys?

A. It is.

Q. Are there any stopings from the 600 foot level of the Providence mine? A. There are.

Q. If so, give a general description of them.

A. There is a stope extending from the end of the cross-cut, or at a point 40 or 50 feet south of the end of the 600 cross-cut on the Contact vein at point 208, where there is a raise with the exception of a small pillar 20 feet south, all the way along the level to point 209. This stope extends upward to a line of junction marked on the map "line of junction," and is colored brown on the map.

Q. That line of junction, of course, refers to what?

A. The junction of two ledges.

Q. The junction of the two ledges shown in the other case?

A. Yes, sir. It is limited to the line marked "line of junction" on its upward course or the upper end of the stope and by the level at the lower end of the stope. I have also indicated a small stope at point 216 on the map where there is a raise which at the present time I found to be inaccessible.

Q. Are all these stopes that you spoke about in the first instance accessible?

A. They are, yes, sir.

Q. How recently were you in them?

A. Well, there are certain portions of that stope that are accessible, but not all. I was in there about two months ago.

Q. Are you familiar with the general upward angle at which the Contact ledge approaches the surface?

A. Yes, sir, I am.

Q. Formed by the underground workings in the Providence? A. Yes, sir.

Q. Are you familiar with, and have you taken levels, or are you familiar with the contour of the overlying surface ground? A. I am; yes, sir.

Q. I will ask you whether or no you have ever made any calculations from the investigations you have made, or estimation as a mining engineer, where, considering the upward angle of that ledge as you have seen it, the contour of the surface country, and the underground levels as shown in the Providence mine? Have you ever made any estimation or calculation as to where that ledge would appear on the surface and cross any of the Providence lines, after leaving the point back of the chlorination works that you have testified to where the croppings appear, going in a southerly direction?

A. I have, assuming of course, the dip at the points where it was inaccessible at the time I was there. As I stated before, at point 22, the apex of the vein has been exposed by the vein of the Champion Mining Company, and it has been again exposed at the northwest corner of the chlorination works. Taking those two points—

Q. Will you mark that point at the northwest corner of the chlorination works?

A. I will mark that point, referring to the northwest corner of the Providence chlorination works, 212½. Now taking those two points, which are about 125 or 130 feet apart, as the strike of the vein southerly——

Q. On the surface?

A. On the surface, and also taking into consideration the topography of the ground in the neighborhood of Peck's ravine immediately south, the hill rising at an abrupt angle. I have calculated that that vein will crop, if it crops at all, on the west side of Peck's ravine, and cross the west side line of the Providence.

Q. Now, referring to the map "Exhibit C," that would approximately be at what point?

A. Approximately at point "A."

Q. This line of junction that you referred to, is that connected with the Contact ledge at all—I mean with this Providence proposition? A. It is not.

Q. That is the line of junction that was mentioned in the other suit?

A. Yes, sir; it refers to this east and west ledge, 209 to 214 on the exhibit.

THE COURT—It has nothing to do with this case?

A. No, sir.

MR. LINDLEY—Then it is not intended upon this map, if the Court please, that the drift run from 209 to 214 is at all connected with the Contact.

MR. REDDY—It runs from the 600 level.

MR. LINDLEY—Yes, but that is distinctly slate, and has nothing to do with the Contact. That is a distinctive proposition and cuts no figure in this case whatever.

MR. SMITH—And what is the other line there?

A. This is another ledge that lays back of the Contact.

MR. LINDLEY—That is also in slate? A. Yes, sir.

MR. LINDLEY—Take the witness.

CROSS-EXAMINATION OF CHARLES E. UREN.

MR. REDDY—Q. Which do you call a side line, looking at this map, and where does the vein go out?

A. Well, I call lines side lines except the end line.

Q. You stated that this Back vein or Contact vein went out of the side lines? A. Yes, sir.

Q. Where is that?

A. I said, possibly if it was projected it would go out at the point marked "A".

Q. Then the line through which it crosses is the side-line through which it would go out, is it?

A. Yes, sir.

MR. LINDLEY—It passes out of the line between the points "X" and "X'", if you please.

MR. REDDY—Q. Now, where does it come into the Providence?

A. It comes in at the point marked "D".

Q. What line is that?

A. That is also a side line.

Q. It enters at point "D", does it?

A. Yes, sir.

Q. Where is the mill-site, Mr. Uren?

A. The mill-site isn't shown on here.

Q. Is it on the other map?

A. Yes, sir, here it is.

Q. And can you show here on this map where the vein crosses the line?

A. Yes, sir, at the point marked "22".

Q. Just outside of the mill-site?

A. Just inside the mill-site, near the corner, crossing not more than seven or eight feet from the corner of the mill-site.

Q. When did you make this map?

A. I have made it within the last three or four months. I don't remember the exact date. I made several of them.

Q. Did you make the map that was attached to the petition for removal, Mr. Uren?

A. I don't know whether I did or not.

Q. Now look at it, and see if that map was made by you?

A. No, sir; I haven't seen it before that I know of.

MR. LINDLEY—If there is any point in this can't we have it explained?

MR. REDDY—I simply want to find out whether he made both of these maps.

MR. LINDLEY—No, sir; he did not, because at the time this petition was made Mr. Uren was not here.

MR. REDDY—I see that the way the line is made there the vein is made to pass outside of the mill-site.

MR. LINDLEY—Well, we don't care about that.

MR. REDDY—But we do. The point we intend to make can be readily seen by looking at the agreed map, which is agreed as being correct. Well, we will let it stand on that stipulation.

Q. Now, how do you determine that it goes out of the side line; is it a matter of theory, or is it a matter of observation, something that you can see?

A. It is a matter simply of theory. As I stated before, it cannot be traced only to a certain point on the surface and beyond that I don't know anything about it.

Q. All that you can say then is that it is a theory which you have that it goes out of the side line you have mentioned? A. Yes, sir.

Q. When were you in those stopes on the 600 level, Mr. Uren? A. Two or three months ago.

Q. Well, that gives you no light as to the course of the croppings on the surface, does it?

A. Nothing particularly, no, sir.

Q. How far did you go on the 600 foot level in a southerly direction—to the end?

A. To a point about 20 feet beyond point marked 217, on Exhibit "B."

Q. That is the end of the 600 foot level?

A. No, sir; it is not.

Q. Why didn't you go to the end?

A. I didn't think it was necessary at that time. I was making a survey for another purpose.

Q. What course did the ledge have at the point where you last saw it?

A. It had a tendency to the left—going to the left.

Q. It had a tendency away from your theory; your theory is that it went up that way and crossed that line, while the fact is that it was developed on the 600 level that it takes an opposite direction, or not an opposite direction exactly, but that it varied?

A. No, sir; but it turned back within a few feet.

Q. But if we show that it did not turn back, would that interfere with your theory? Now, look at this

map for a few minutes, Mr. Uren. Will you point to the place where you stopped in the examination of the 600 foot level?

A. I guess I had better mark that.

Q. Yes, mark the point to which you examined that 600 level. A. 53½.

Q. Now, this line in red to which I point, how is it marked there?

MR. SMITH—"P. Cc. 12 to 13."

MR. REDDY—Q. That would correspond with the line "B A," wouldn't it? A. Yes, sir.

Q. Called or named by you the side line?

A. Yes, sir.

Q. Now, if this 600 foot level, if it follows the ledge, and as marked on this map, it would be going away from the side line when last seen, supposing that to be correctly marked there, then it would be going away from your side line, would it not?

A. Yes, sir.

Q. Then if that is a fact it couldn't come out at point "A," could it, unless it made a great many turns?

A. I still think it can. That doesn't make any difference.

Q. How? Beginning at point 60, please mark on the map what course it would have to take to get out at the side line at "A," so-called?

A. Of course these questions are directed to a horizontal plane. The surface here at Peck's ravine rises very abruptly, several feet higher, which would naturally throw the apex back further west.

Q. But I understand, if it was going out in that course the apex would be out in this direction, wouldn't it? A. Not necessarily.

Q. Well, if that was the strike, then the dip would be at right angles with it, wouldn't it, locally or generally?

A. Yes, sir; but taking into consideration the dip of the ledge dipping this way, to the eastward, and the ground rising rapidly, the apex would naturally be further west.

Q. If it was dipping to the eastward, how could it have its apex at that point?

A. Why, it would necessarily be at that point.

Q. How far would it be from the point 60 to the side line on a horizontal plane?

A. You mean a direct line westward?

Q. Yes, that would be good enough.

A. I make it 730 feet.

Q. 730 feet from point 60 to the so-called side line, is it?

A. Yes, sir.

Q. Now, at what angle did you find that ledge dipping?

A. At various angles.

Q. Well, take it generally, as far as you observed it?

A. Well, I observed it to be about 30 where I took it.

Q. Now, at what angle would it run to reach the side line, or where would the apex come out on the surface following that angle?

A. It depends on the elevation at this point entirely.

Q. What is the elevation there?

A. I don't know.

Q. Then you don't know the difference in height or elevation between that point and the side line?

A. No, sir.

Q. Then if you don't know that, how do you know it would come out there; upon what does your theory rest?

A. Well, as I said before, the topography of the country is such that it places this apex further west than it would if it was down the creek here.

Q. Now, not knowing the difference in elevation, how could you make any calculation as to how it came out?

A. Well, as I said before, it was only an estimation. You couldn't tell. You can't follow it to the surface. It can't be traced a foot beyond the northwest corner of the chlorination works.

Q. Well, it all sums up that you don't know anything about where that would come out?

A. Well, I claim as well as anybody knows.

Q. I am not making any comparison at all, but do you know as a matter of fact, anything at all about where that vein would come out?

A. I have testified that I do not.

Q. That is simply theory?

A. I will not say that it is simply theory.

Q. Did you examine the upraise marked 53, I think, and 54?

A. I did, for a short distance.

Q. How far up did you go?

A. But a short distance.

Q. Well, how far, about?

A. Well, about 15 or 20 feet.

Q. Was there anything to obstruct your ascending that upraise?

A. From what my understanding was at that time—I had some men with me, and they said it was not accessible.

Q. Then you didn't go up the upraise yourself?

A. No, sir.

Q. Then you don't know how far that upraise goes toward the surface?

A. No, sir. I am not prepared to dispute anything in the upraise at all.

Q. And the other upraise is where that is, isn't it? (indicating). A. Yes, sir.

Q. Did you go up into that raise?

A. Yes, sir; I went up to the top of that.

Q. And what was the distance? Do you disagree with our surveys on that?

A. No, sir; I think not. There is no disagreement.

Q. Now, did you find the vein in both of those upraises to which we have just referred?

A. There is no question about the vein being in both of them.

Q. There is no question about the vein being in both of them right to the top? A. Yes, sir.

Q. Now, if the vein continued on at the angle which you found it there, where would it come up on the surface?

A. Well, that is coming down to the same question. It would be presumption if it continued on that particular line.

Q. When you have the dip and the angle and the lines both, as a surveyor, you can state, pursuing the same direction and the same angle.

A. Well, as I said before, this raise from 53 to 54 I don't know anything about, except for a distance of

15 or 20 feet. This raise from 51 to 53 would come out unquestionably in the vicinity of point marked "C" on Complainant's Exhibit 4, where the croppings have been found.

Q. Then it would not come out through this so-called side line?

A. Well, I have testified that the point from 51 to 52 has nothing to do with the point southward.

Q. Well, I am speaking of this particular point here (indicating); that couldn't come out through the side line, could it? A. How could it?

Q. Well, I ask you the question; could it come out there? A. Certainly not.

Q. This larger upraise you only went up 10 or 15 feet? A. Yes, sir.

Q. And beyond that point you don't know anything about that course? A. Not beyond 53½.

Q. And you don't know anything about the inclination of that vein, do you, except at one point?

A. I know that in the stope, which I have shown on another exhibit here.

Q. Does that extend any further south than 53½?

A. It does not; no, sir.

Q. Does it extend that far?

A. I think it does.

Q. Well, refer to this map?

A. But I wish to refer to this one first. It doesn't extend as far south by probably 200 feet (referring to Respondent's Exhibit "B.")

Q. I understood you to say that the red line to which I am now pointing is the vein in the slate?

A. Yes, sir; it lays back of the Contact, to the west.

Q. This is the 600 foot level, and there is a cross-cut run back from that, is there?

A. Yes, sir; to that vein.

Q. Does it strike the slate vein, the vein in the slate?

A. It does.

Q. Is there any connection between this cross-cut and the drift you have marked there as indicating the slate vein or vein in the slate?

A. You are mistaken in pointing out the cross-cut. The cross-cut is from 217 to 218, and not where you have indicated.

Q. What does this indicate here?

A. That is a vein, the east and west vein, and a drift on the vein.

Q. Was that work done by the Providence people?

A. I suppose so.

Q. How far does that extend in there?

A. 220 or 230 feet.

Q. What is disclosed there, any vein? A. Yes, sir.

Q. How far does it extend, or where is it cut by that cross-cut?

A. Which cross-cut?

Q. This? (Indicating.)

A. That is a drift on the vein itself.

Q. It is nearly at right angles to the 600 level, is it not?

A. Yes, sir.

Q. You say it is a cross-vein? A. Yes, sir.

Q. Does it cross clear through into the granite?

A. No, sir.

Q. It simply unites with the vein on the 600 foot level?

A. It doesn't unite, it just comes right up to the Contact and ends, and the same way all along this line

of junction, it comes there and ends, and there is a distinct line of contact all along the junction.

Q. How wide is the vein there?

A. It is all stoped out where it is colored, and the stopes are from six to eight feet high in places. I suppose the ledge was very large.

Q. Did you go to the end of this line at right angles with the 600 foot level?

A. Yes, sir.

Q. Was the vein still there?

A. No, sir.

A. Had it pinched out—ended?

Q. Yes, sir; there was very little vein in there. In fact, this slate vein, the one back of the Contact, had been intersected at 213, 215 and 216 and stoping under the cross vein.

Q. What is the distance from the 600 foot level on this connecting drift to the vein in slate?

A. The cross-cut from 217 to 218 is in the neighborhood of 200 feet.

Q. What is the width of the vein in the slate?

A. Which vein do you refer to?

Q. Well, I will put the question in another form. What is the distance between the Contact vein and the vein in slate that you have marked?

A. As I stated, 200 feet, the full length of the cross-cut.

Q. And the cross-cut is run through slate?

A. Yes, sir.

Q. What does this line indicate here?

A. It is marked "line of junction."

Q. Line of junction between what?

A. Between what you term the cross ledge and the Contact vein.

Q. Does that line run through the stopes?

A. Yes, sir.

MR. LINDLEY—That is our case.

MR. SMITH—We will now read certain portions from the minute book of the respondent, Champion Mining Company, and introduce them in evidence. First I will read from page 108, from the record of a meeting of the Board of Trustees of the Champion Mining Company, held Saturday, October 12th, 1884, at 12 o'clock M. at the office of the Secretary, 522 Montgomery street, San Francisco. "Present: J. J. Rey, "H. Steinegger, H. Evers and Maurice Brandt, "Mr. Edward Lynch, attorney-at-law for the com-
"pany, assisting at said meeting. The President
"declared the meeting open. On motion, resolved
"that the reading of the minutes of last meet-
"ing be dispensed with. On motion of Mr. Brandt,
"the following resolution was unanimously adopted
"Mr. Lynch is hereby authorized and employed as
"the attorney of this corporation"—I will not read
that. "And on further motion of Mr. Brandt, the fol-
"lowing preamble and resolution were unanimously
"adopted. Whereas the title of this corporation to its
"property is not sufficiently secured and is actually
"trespassed upon in part, and it is necessary to quiet
"title to same, therefore the Superintendent of this
"company with the advice of Mr. Lynch is hereby
"authorized on behalf of this corporation and in trust
"therefor to make and post such notices of relocation
"for the better definition of such quartz ledges and
"their surface ground as may be found necessary, and
"thereafter Mr. Lynch is hereby authorized on behalf

“ of this company to institute and prosecute to finish
“ application for the U. S. Patents to all the quartz
“ ledges and surface ground of this corporation, not
“ covered by patent, and J. J. Rey, President hereof is
“ hereby authorized to act as the agent of this corpor-
“ ation in all proceedings for the patent, and at the
“ same time Mr. Lynch is hereby authorized to bring
“ such action against persons who may or do claim
“ adversely to this corporation as is necessary to quiet
“ the title to this property.”

Also, on page 134, or beginning on page 134, “at a
“ meeting dated April 19th, 1887, held at 8 p. m. at
“ Dr. A. Wilhelm’s office, No. 33 Kearny street, San
“ Francisco, California: Present, Messrs. H. Stein-
“ egger, F. Boeckmann, J. Vincent, P. Anthes, Dr. A.
“ Wilhelm, F. Zeitler. On motion, Mr. Steinegger
“ was called to the chair to preside over this meeting.”
Then on page 135: “ Mr. Vincent having stated that
“ the latest reports from the mine were rather of an
“ unsatisfactory and incomprehensible nature, Mr
“ Boeckmann moved that Mr. Vincent be sent to the
“ mine and be authorized to use his own discretion in
“ regard to the work to be prosecuted, and to stay
“ there such a length of time as he may consider
“ necessary. The motion was seconded and carried.”

I read also from page 139, from the minutes of the
meeting held on Friday, August 26, 1887, at 8 o’clock
p. m., at Dr. A Wilhelm’s office, No. 33 Kearny street,
“ San Francisco: “The roll having been called, the
“ President announced that 25,990 shares out of
“ 27,380 shares being represented, the meeting was
“ open to proceed to business. Mr. J. Vincent re-

“ ported what work had been done on the mine during the time of his management; that the hoisting works put up were in perfect running order, requiring over six inches of water, which, at ten cents per inch, requires an outlay of 60 cents for every 24 hours. At the shaft there are three shifts working, two men each shift. The tunnel had to be caved out on account of caves, all of which was vigorously prosecuted.” That is all.

MR. REDDY—That is the case.

Testimony closed.

SECOND DAY.

Friday, June 1st, 1894.

Argument of James F. Smith, Esq., on Behalf of Complainant.

MR. SMITH—May it please the Court, as was stated in the opening of this case by Senator Reddy, the action was originally commenced in Nevada county for damages, and also for a decree of injunction restraining a trespass. The action was begun on the 24th day of May, 1892, and the trespass in the complaint, which I understand is not denied, was alleged in the complaint to have been initiated about the October previous, which would leave something like six or eight months intervening between the time of the commencement of the action, and the time that the trespass is alleged to have been first committed.

It is alleged also in the complaint that no knowledge of this alleged trespass came to the complainant,

or any of his co-owners, until sometime in February, 1892, probably three or four months before this suit was commenced.

Upon the application of the respondent, the case was transferred to this court, and a demurrer was then interposed upon the ground that in the same complaint were embraced grounds for equitable and legal relief; the complainant in the action insisting upon the argument of that demurrer that the allegation was really a bill in equity—the allegations of the complaint—and the setting out of damages was purely by way of inducement. However, the demurrer was sustained, and the complaint in the case was compelled to recast in two pleadings, one upon the law side, and the other upon the equity side of the court. To the bill in equity they answered, and upon that bill in equity and appropriate affidavits, an application was made to the Court for a temporary injunction pending the trial of the case. To this an answer was made by counter-affidavits upon the part of the respondent, and a request made to the Court that the complaint in the action be also restrained and enjoined from operating its mine, or carrying on its mining operations in certain other territory. There was no cross-bill; there was an answer pure and simple; and that is practically the condition of the pleadings to-day.

The portion of the territory for which the respondent in the action asked that the parties be restrained was the portion from this line known as the line running north 73 degrees, east and parallel to the north boundary line of the Providence, to the line which we claim is the end line; our injunction operating as to the south part of it.

Both matters were submitted upon the argument, and briefs were filed, copies of which your Honor has now, but there was no decision upon it, because, prior to that time, the case came on regularly for trial, and there was never any decision upon that application for temporary injunction, and both parties being still under restraining order from working in any part of the disputed territory.

The Providence mine in this case, as was proven upon the trial, was located some time in 1857, originally by thirty locators, who got one hundred feet apiece in length along the lode, and an additional 100 feet for the discoverer, or original locator; so that the full length of the lode line was 3100 feet. It was what was then known as a ledge location, pure and simple.

Under the mining laws and customs of that particular locality, ledge locations were permitted. The surface ground was a matter which was afterwards acquired according to local rules and customs, and usually, only sufficient surface ground for a mill and dumpage site, and for a hoisting works. That was about the usual amount that was allowed by the local customs in Nevada county at that time.

The New Year's Extension relocation, or New Year's Extension, as it was originally located, was made some time in 1877. In the meantime, in April, 1871, the Providence people had obtained a patent in which was specifically granted by two separate and distinct grants contained in the patent itself, the lode throughout its entire length and depth and also a grant of certain surface which was described by courses and distances.

In 1877, the Champion people made their location, which was then known as the New Year's Extension. That location, as originally made overlapped, both for surface and for lode, this line which is claimed in this case to be the end line, and which is known as the line running south 43 degrees west. Sometime in 1884, however, the New Year's Extension was relocated, and in that New Year's Extension, as relocated there was a specific recital of the fact of the conflict of the original location as made, with the rights granted by the letters patent to the Providence people, and in that also a specific abandonment of all parts of that lode and surface which conflicted with the rights granted by those letters patent.

Not content with that in the notice of relocation itself, the particular territory and specific portion of the lode which was abandoned was particularly described as all that portion of the lode and surface south of this line running south 43 degrees west, or practically the same line with about 10 minutes variation. But they refer to it as the line which cuts off the southeast corner of this claim.

The contention in this case is one purely of end line, and of the extra lateral right which may result from the application of the end planes drawn down through the end line which the Court may fix as the true end line on the Back or Contact ledge so far as the complainant in this action is concerned.

The first consideration to be brought to the mind of the Court is, have we any extra lateral right? That seems to be the last theory to which the defense in this action have been driven. Every other refuge,

every other theory that has been adopted from the beginning of this case to the end of it has been cut away from them, either, by decisions of the courts made soon after the commencement of the action, or within the last few months; so that the last refuge of the defense in this case rests purely and simply upon the ground, have we any extra lateral right?

On that subject we claim that we have an extra lateral right. This ledge came to us, not, it is true, by virtue of the original patent, because in that original patent were especially reserved to the Government all claims or ledges or lodes other than the Providence lode found within the Providence surface. But in 1872 this act was passed which has been frequently referred to during the last week or so in this court, under and by virtue of which—a special grant from the Government—we acquired, in addition to the Providence lode, and by virtue of our patent, by virtue of our ownership of the surface under the patent, by virtue of that alone, coupled with the act, we acquired this Back vein or Contact vein.

Now, what was that grant? That grant, a careful reading of the act will disclose, was a grant of all ledges, the top or apex of which was found within the surface ground throughout its entire depth, throughout the entire depth of those ledges, although they should pass beyond the side lines; between certain planes. So that, under the special enactment of Congress in this matter, representing the Government, the paramount owner of this claim, the paramount owner of this ledge, the ledge was granted to us, not within our

surface lines cut down vertically to the center of the earth—though that is specifically given to us by that Act—but also such outside parts thereof as lay between certain planes. So that, so far as the enactment is concerned, so far as the grant of Congress to Austin Walrath and his co-owners, is concerned in this case by their predecessors in title, there was a specific grant, not only of all portions of the ledge within the absolute surface lines cut down vertically, but also those portions on the dip which should pass out and beyond the surface lines, between certain vertical planes.

How is this defeated? Counsel contends that it is an impossibility in this matter to determine what is the end line. He has had his theory, which I will come to presently. But I ask the Court, if, after the miners had besought Congress to make to them specific grants by virtue of their ownership of certain surface—had besought Congress to make them a grant of their mine, of other ledges within their surface ground, that Congress did, as a matter of fact, grant to them only that portion of the ledges which was the least valuable and the least to be sought after? In other words, if it was the intention of Congress, when it passed that enactment, to deprive the mine owner of his most valuable right, namely, the pursuit of his ledge upon the dip between certain vertical planes? Clearly, so far as the intention is expressed in the Act, it seems to be beyond argument that the intention of Congress was to give him the rights to the ledge upon its dip; and this Court, if it is within the bounds of possibility, if it will work no injury to those who have ac-

quired prior rights, if it will work no injury to those who have a right, first and before us, will establish the end line as we contend for it, beyond peradventure, in order that the full rights granted by the Act of Congress shall come to the complainant in this action.

Our contention in this case is, that the line running south 43 degrees west, which is this line known as the line running from "P. Co. No. 11" at this point to "P. Co. No. 12," is the true end line on the Back or Contact vein, so far as our relations to the Champion people are concerned. It is not the end line because we located it. It is not the end line because we marked it upon the ground or surveyed it or put up monuments upon it so that those who ran might read; but it is the end line because it comes within the definition established by the customs of the miner, and because it comes within the definition by the judicial decisions of the country. Even if we had located an end line for this ledge, even if we had drawn an end-line and marked it by fixed monuments and filed our diagram in the Recorder's office and did everything possible to make it an end line, if that line was not crossed by the ledge upon its strike, if the physical fact was not there that the ledge crossed that line upon the strike, however much we located it, however much we monumented it, however much we recorded it, it would not and could not be an end line.

And what is an end line? Generally speaking, without particularizing, all agree that it is that line which determines the right of the miner in his pursuit of the ledge upon its strike. But the tug of war comes when the selection of that line is to be made.

Originally, as defined by the judicial decisions, it was the line of the surface which was crossed by the ledge upon its strike. It was a very simple definition, and one which, upon first blush, would seem to have regulated all acts which could result. But under later decisions, under the presentation of a new state of facts, it has been frequently found that a ledge might cross a line upon its strike, and still that line not be an end line, and work the most serious injustice to all in a specific mining locality.

So that my contention here as to the definition of an end line will be that it is that line which is crossed by the ledge on its strike, and no part of which line is parallel to its course. It seems to me that that is the true definition of an end line. It reconciles all the decisions upon that subject; it reconciles the decisions made in *King vs. Amy*, and *Tyler vs. Sweeney*; recognizes every decision that has been made upon that point; because in *King vs. Amy*, it will be remembered that the two lines of that plane which were crossed by the ledge upon its strike, were at no part of them parallel with the course of the vein. In the case of *Tyler vs. Sweeney*, one of the lines crossed was absolutely parallel with the course of the strike for a very considerable portion of its distance, and the other line was not parallel with the course of the vein, and crossed it upon its strike. So that the Court very properly in that case simply applied the true end line to that portion of the vein where it crossed out of the surface.

Now, does the line at bar come within that definition? Does this line meet the requirements of that

definition which, as I will claim, was established by the miners' custom and the judicial decisions of the country?

I claim that it does; that it is the natural end line of that lode, and that upon the morning of May 10th, 1872, had the miner made a location of this Back vein with only the surface lines of that surface at his command, there was but one line that he could have selected as an end line for his lode, and that was this line.

Mr. Lindley, in his argument in the Wyoming case, seemed to claim that this beneficent law of May 10, 1872, which was meant to extend the rights of mine owners, was limited only to those mining locations which had parallel end lines and parallel side lines; in other words, only to those claims which were regular in shape and regular in form. I wonder if Mr. Lindley ever paused for a moment to consider the monstrous injustice that would be due to the mine owners by putting that construction upon the law of 1872? Your Honor will remember that the ledge was the thing that was sought. The ledge was what the miner pursued; the ledge was his property; the surface was merely the incident. That which came to him merely for the convenient working of his lode cut but very little figure so far as his ownership of the claim was concerned, except in some specific localities, where a location practically, as under the Act of 1872, was required by the local customs. I will venture to say, without fear of contradiction, and I think I am borne out by the statistics which have been compiled by my friend Mr. Wright, in the

Wyoming case, that 90 per cent of the claims in existence owned by miners had an irregular shape, where it was practically impossible to say that they were laid out in the shape of parallelograms. And yet was this act passed on May 10th, 1872, merely for the benefit or five per cent of the miners, 95 per cent of them left practically without acquiring the rights which were given to the five per cent? Was the object of that act, instead of smoothing away the difficulties and giving to the miners peace, was the object of that act to involve them in constant litigation as to their rights upon the dips of their vein; that they should expend labor for probably three hundred or four hundred or five hundred feet in developing a vein, and then, upon finding it departing from their side lines, to be told by the courts that their money had been frittered away, and that the richest part of their mining property must go from them? I submit that that construction upon the Act of Congress passed May 10th, 1872, is a strained one, and that such a construction will never be placed upon that act, except where it is impossible for the Court to define an end line; and then, not upon the principle that the act did not give to the mine-owner the right to pursue his ledge upon the dip, but upon the principle that other rights had intervened which would prevent it.

MR. LINDLEY—And in discussing this branch of the case, I might as well make some reply to what Mr. Lindley said in the Wyoming case, more by way of making myself clear upon the subject—upon the famous Horseshoe case. I think that that case is effectually disposed of by the cogent reasoning of the Court in the case of *Tyler vs. Sweeney*.

Though the language of that decision is somewhat broad, it must be taken in the light of the facts of that case. As was well said in the case of *Tyler vs. Swee-ney*, it was never meant that simply because the location might be irregular, all rights upon the dip were taken away. In that case it will be remembered that the patent issued was a patent which gave to the party those exterior portions of his vein lying between planes not drawn through the end lines, but through the end lines of the survey.

Now, the end lines of the survey were marked upon the patent; they were definitely determined. It is true that the mine owners might have complained to the Government, and might have refused to accept that patent, and might have required a patent which gave him the right to the end planes of the location, to the end lines of the ledge. But he did not do so; he accepted the Government patent, and he was bound by it; and the Court well said in that case, that the plane drawn down through those end lines would effectually cut him off from all rights to the ledge upon its dip towards the eastward. And let it be remembered here, in the discussion of this question, that so far as this surface is concerned, of the Providence, shown here in Exhibit No. 1; so far as this surface is concerned and its relation to the Back or Contact vein, we had nothing to do with that surface. That surface was already located; we had no power over it. The grant came to us from Congress, it will be presumed, with the full knowledge of the irregular shape of that ground; and yet the right was

given to us, not only to all portions of the ledge within the absolute surface lines cut down vertically, but also the extra lateral right.

Mr. Lindley, in his opening statement, referred to what he calls his *reductio ad absurdum*, merely, that if this Contact vein, by some strange mischance should cross what we call the westerly side line upon its course or strike, that under our contention, and under our definition of an end line we would be practically entitled to nearly one-fourth of the mineralized globe.

I differ with Mr. Lindley there. The position that he insists upon is that as this is an end line because the lode crosses it, therefore this must be an end line also, because the lode crosses; and that vertical planes drawn down through this point, and through the westerly side line, the vein dipping toward the east, would give us practically one-fourth of the mineralized globe. But Mr. Lindley forgets that this line does not come in any degree within the definition of an end line, as we claim it, because, for a considerable portion of its distance it is practically parallel with the course of the vein; in other words, if the ledge did, upon its course or strike, cross that westerly side line, it would simply be the Tyler vs. Sweeney case over again; there would not be a particle of difference in principle between the two cases. The ledge passes out of a true end line, an end line which crosses the lode upon its strike, and no portion of which line is parallel to the course or strike; it crosses out of the side line, a portion of which is parallel with the course of the strike; and the principle laid down in Tyler vs. Sweeney must apply, namely, this line shall

be applied at the point where it crosses through the true side line, and we get no more of the ledge upon its dip than we do at the surface.

I stated that I was of the opinion, in fact firmly believed, that all the theories that had been advanced by the defense in that case had been practically cut away from by the decisions rendered in the case of King vs. Amy, and also in the case of Wilhelm vs. Sylvester—a decision from this exact locality rendered by our Supreme Court within the last couple of months. But as he has enunciated his theory in his opening statement, and also in his brief, I would like to call your Honor's attention to what we think are fatal objections to the sustaining of that theory, which is the only one, the only practical theory up to this time as to the end line proposition that has been advanced by the defense; that is, the only theory that they have advanced for the establishment of an end line.

They claim that the line C D, which is a line running north 73 degrees east, and is parallel to the north boundary of the Providence lode or the Providence claim known as the line running south 73 degrees west, must be applied at the point where the ledge crosses what they call the side line A B prolonged; in other words, the theory that they contend for, stripped of all its verbiage, is that the end line of the original lode—assuming for the moment it to be an end line—must of necessity, either by itself, or by relation, be the end line of every other lode in the grant. To that theory we make three objections.

The first is, that it is based upon the theory that the line running south 73 degrees west is the end line of the granite lode, which we deny.

The second objection is, that under the theory, as they contend for it, they would be entitled to enter within our absolute surface lines and take out portions of the ledge whose apex is admittedly in this case within our ground.

The third objection is, that if this theory is one which is to obtain the mind of the Court, and appeal to its judgment, it must be one so radically sound in principle that it will apply, without being reduced to an absurdity, to all other ledges within the ground.

Now, it is practically impossible to have that theory apply in the case of the cross lode. If a ledge was found here which, under the Act of 1872, would come to us, crossing the granite ledge through the easterly and westerly side lines, how in the name of common sense could the end lines—admitting for the purpose of argument for the moment that they are end lines—how could the end lines of the granite lode, if they be end lines, be applied by any doctrine of parallelism to those cross lodes? The theory must fall of its own weight.

I have been cited to the Flagstaff case, and also to the other cases with which the Flagstaff was involved, and also to a case in Colorado entitled Wolfely vs. Leavenworth, which your Honor will find cited in the brief of respondent in this case as for ever establishing the doctrine for this country, that the surface lines shall govern in the determination of the end lines of ledge locations. I deny that doctrine. I deny it most

emphatically, because it does not seem to me to be based upon sound principle; and my contention will be that none of those cases are decided upon the basis of a ledge location pure and simple. An investigation of the Flagstaff case will show that the location in the Flagstaff case was practically a location as required by the Act of 1872; in other words, the local rules and customs allowed them so many feet of the length of the ledge, and 100 feet, 50 feet to each side of it, which practically—

MR. REDDY—Required them to locate.

MR. SMITH—Yes, sir; required them to make that location. So that the Flagstaff case was practically a parallelogram, and when it was found they had located their surface, they had located it in a certain direction, there were no monuments except at the beginning or end of the lode, they had fixed the length of that lode in the direction in which it ran, and yet, when it was found that instead of the ledge running northwesterly as they had described it in their location, and as other miners had a right to rely upon, it was found that this ledge ran nearly due west. What a parody of justice it would have been under those circumstances, with the parties having laid out their location, laid out their surface in conformity with it, and the local miner's custom, that then they should be allowed to shift that parallelogram around to suit the actual state of facts as developed by subsequent exploration of the ledge.

But, however that may be, so far as this case is concerned, it is definitely and forever determined that this is not the end line of the granite lode,

and this is not the end line of the granite lode. Under the terms of the patent, as I have stated there are two specific and separate grants. Is there any one who will contend that the Government could not have granted to us this ledge throughout its length, width and length, for a certain number of feet, and have granted us no surface at all? I apprehend not. Now, because the grants in this patent are separate and distinct, because they happen to be included in the same patent, instead of in separate patents, are we to be subjected to a collateral attack? In this very Leavenworth case which is cited by the respondent, it is specifically upheld that the Government had the absolute right to grant the mineral ledge alone, or the surface, or both. If it could have done both in separate grants in this patent, can the respondent in this case now attack the grant?

MR. LINDLEY—In other words, you contend that your ledge goes clear through 600 feet to the south, and so many feet to the northwest and passes out of your—

MR. SMITH—Yes.

MR. REDDY—The granite ledge.

MR. SMITH—I claim, in the first place that none of the decisions which have been cited by you touch a ledge location, pure and simple, as this was.

MR. LINDLEY—What was the Flagstaff location, precisely like this?

MR. SMITH—You will find that under the local miners custom there they were entitled to and compelled to take surface ground, 50 feet on each side of the ledge.

MR. LINDLEY—Mr. Smith, let me ask you one question. Wasn't the Flagstaff location in terms exactly parallel, outside of the local customs; in other words, was it not a location so many feet upon this ledge, without any mention of side lines?

MR. SMITH—That is the exact point of difference between us.

MR. LINDLEY—You are injecting a question of local custom that is not in evidence. There is no evidence of local custom.

MR. SMITH—The Court will presume—

MR. LINDLEY—Never. It is a question of fact to be proven like any other fact. The Court don't take judicial notice of local customs that existed—

MR. SMITH—As I understand the case, it stands admitted that we have derainged title through the original location which has been introduced in evidence and it will be presumed by the Court, that admission standing of record here, that we deraign title through that notice, and that notice was made in conformity with the local rules and customs. There is not a word in that notice anywhere about surface and, as a matter of fact, as I stated to your Honor, in that locality all the locations were nearly made of ledge locations, and they simply got the surface required actually for the working of the mine. A man might have, under the local rules and customs, 100 feet of his own and acquire 1700 feet either by purchase or consolidation with others, none of whom of those 17 men would have a foot of surface ground, and he, himself, be the only owner of it. The surface ground was simply used for the convenient working of the mine.

They had a perfect title to that ledge, and when they sought their patent the condition of their title was exemplified by the patent itself, which said that they had 3100 feet on the ledge; and also certain surface ground specifically described; not the ledge within certain surface lines, because I concede that that would be a different matter; but the ledge first, the surface ground afterwards.

But, however that may be, our patent is in evidence here, and it contains a specific grant of those 3100 feet. It does not lie with Mr. Lindley to question how many feet of that ledge we are entitled to. Its ends are determined by its length, not by its surface. Your Honor could see the very radical injustice that would be worked in the very case that I state of the man who had only surface ground for his dump, and for his mill-site and for his hoist, and yet acquired by purchase or by consolidation, or in any other way, either by paying his own good money for it, or by the formation of a partnership, 1700 feet of a ledge which had absolutely no surface at all, and to which the miner's custom would not permit him to get any surface unless it was absolutely necessary. As long as the surface which he had was all that was required for the convenient working of his mine, he could not get a foot more surface. Yet, what a radical injustice that would be, to say that though he had purchased 1700 feet of ledge, that that was bound by the surface lines when he would apply for a patent. I contend that the Court put a strict construction upon that, and will only consider that in the light of the facts of the cases as they were decided; and however it may be, they

are inevitably foreclosed by the language of our patent, which grants to us this ledge for 3100 feet of its length. They are inevitably foreclosed, because it was within the power of the Government to grant us that, and having granted it to us it is not subject to any collateral attack at this time.

Mr. LINDLEY—We are not claiming any section of the granite ledge.

Mr. SMITH—I know, but you base a theory upon the basis that our right of property to that ledge is confined within certain limits, whereas we contend that the limits are far beyond those lines; and your theory, being based upon the proposition that this end line running south, 73 degrees west, determined our rights on the granite ledge towards the north, therefore it either by itself or by relation must determine our rights to every other ledge, which we deny, first, upon the ground that it is assuming something that has no existence, namely, that that is the end line of the granite lode.

Mr. LINDLEY—No, I say it is the end line of the location.

Mr. SMITH—I don't apprehend that there can be such a thing as an end line of a location separate and distinct from the idea of its determining and marking the limit to which the miner can pursue the ledge upon the strike. In other words, an end line may be located as an end line, and still not be an end line, and it is not the end line of the location, and the courts have held time and again that it is not the end line of the location. As for instance, where it passed out of both lines, as in the Argentine case, it is held

that it is not an end line, and they don't say it is the end line of the location. The end line of the location is determined by the physical fact, and not by what men call it, or miners either.

Now, the second objection to this theory. Notwithstanding the grant of Congress, which, in specific terms, says that we shall have all of that ledge within our surface lines cut down vertically, its apex being found in our ground; notwithstanding the fact that we were the prior locators, years and years before, before the New Year's Extension was ever thought of being located; notwithstanding that fact, their theory claims from your Honor the announcement from the bench of the doctrine that they have the right, in the teeth of the Act of Congress, and in the teeth of a prior location, to enter within our absolute surface lines and take out portions of the ledge, as they have done in this case, which really belonged to us, and to which they have no title.

There is only one case, as I understand it, and that is the case that is announced in *Tyler vs. Sweeney*, where that may be done; and that is the case where two miners have the same right to pursue the ledge upon its dip, then he who is first in point of time is first and prior in right. So that even if there was any conflict of end line in this case—and we claim there is not any conflict—no conflict between the Champion and ourselves—so far as the same rights and the pursuit of the ledge upon the dip are concerned—if there was any conflict we would be entitled to it by virtue of our prior location and our priority. So that in no view of the case would they be entitled to enter within

our surface lines. The doctrine laid down in the Argentine case was confirmed in the case of Tyler vs. Sweeney.

MR. LINDLEY—Am I correct—I desire to get your meaning, or correct a false impression that I may have. We have not entered upon your surface lines.

MR. SMITH—Beneath our ground.

MR. LINDLEY—You mean drawn below the surface lines?

MR. SMITH—I claim that a common law and under the Act of Congress itself, we are entitled to every portion of that territory, barring the reservation, the mere land itself, down to the center of the earth. I claim that the Act of Congress has confirmed that to us so far as the mineral is concerned, and says to us that every ledge which has its apex within our ground belongs to us, first between the lines vertically cut down of our surface, and also such exterior parts thereof as pass out through outside line between certain vertical planes. That is my contention, and that your theory being in conflict with that Act of Congress which unquestionably gives to us the right to every portion of the ledge within our side lines, cut down vertically, must fall on that account.

MR. LINDLEY—You think the proprietor of the apex outside of your side line, where the ledge passes under your surface ground——

MR. SMITH—There is no apex in our ground.

MR. LINDLEY—Supposing there is an apex outside your surface ground, hasn't the proprietor of that apex a right to follow it under your surface ground?

MR. SMITH—Certainly he has a right to follow it on the ground, but if the apex is on our ground,

he has no rights, and it is held—I forget the title of the case, but you will remember it, that where a man had the apex within his ground, and it split off onto a spur into the adjoining territory, though there were separate and distinct end lines, that that line became a side line for the purpose of determining his right to the pursuit of that spur. The other man having the apex in his ground, this became an end line. There cannot be any question about that.

I have already discussed the subject of cross lodes.

As I have already said, if there was a theory to be adopted in this case which is not to be for this case alone, but which is to determine the rights in future contests, it must be a theory which is sufficiently flexible to apply to all classes of lodes found within the surface. I claim that this theory is not that flexible; that it would be a mathematical impossibility to carry that theory out in the case of cross lodes.

Before I depart from the subject of the ledge location, I wish to show to your Honor that the validity of that location and the rights are confirmed in this very case of Wilhelm vs. Sylvester, which I understand the respondent has cited to you in the other case. It specifically recognizes that fact, and also specifically recognizes the fact that they have no right to enter within our surface ground. Let me call your Honor's attention to a short extract. The language of the statute is "clear and explicit, and in designating the property rights of locators, is in no wise "ambiguous or uncertain. It expressly, and in language which needs no construction, grants to such

“ locators every ledge or lode, the top or apex of which
“ lies within the surface lines of the location—that
“ is, such parts of the ledge as lie within such lines.
“ And there is no limitation or exception of any
“ such ledge on account of the direction in which it
“ may run. It may be parallel with the originally
“ discovered ledge, or it may approach it at right an-
“ gles or at an obtuse angle, or at an acute angle, it
“ may intersect it or not, and still it will be clearly
“ within the language of the said section.”

The language of the Act of Congress is clear enough in itself.

Now, as to the other matter. Let it be remembered, if your Honor please, that in this theory this line which is called C D is a separate and distinct, an absolutely new line; a different line from the line E C. The line E C runs north 75 degrees east, while the line C D runs north 73 degrees east, a variation of something like two degrees in the two lines. This little diagram, if your Honor please, will show the difference between the two lines. This red line is really the line of prolongation of the line running north 75 degrees east.

MR. LINDLEY—That is the south end line of the New Year's Extension; the one we claim is the south end line.

MR. SMITH—Yes, sir; the one you claim is the south end line of the New Year's Extension.

Your Honor will understand that these lines having breadth as drawn, and it being impossible to draw a mathematically accurate line—because it has simply depth—that the difference between the two lines cannot possibly be shown near this point; but they are

different lines, varying two degrees, and of course form really an elbow; that is, if it could be mathematically drawn and shown to the eye, those two lines would practically form an elbow. And right there your Honor will also remember that this line which they claim is the south end of the New Year's Extension is not in reality a south end line at all, because it meets no requirement of the definition of an end line. It will be remembered that that line running north 75 degrees east, which Mr. Lindley calls the south end line of the New Year's Extension, is the full, complete northern boundary of the mill-site, and on all the admitted maps it stands that this ledge crosses this line just at the point where the New Year's Extension south line intersects the line of the Providence running south 43 degrees west. Now, what follows from that? Two things, first, that it does not cross, and, second, that it could not cross that line under their locations. There is no mistake in the map, because your Honor will remember that it stands of record here and admitted that this is a patented mill-site; and it stands admitted here that in that mill-site there is no mineral, consequently, no part of the ledge, and if there be no part of the ledge in the mill-site, it follows, as the noon follows the morning, that no part of that ledge can cross the northern boundary of the mill-site, otherwise there would have been mineral in it; and not crossing that line, necessarily that line cannot be an end line. The only line that it crosses is really this line, "P. Co. No. 11." That is the line that is crossed, because if it is even thrown a fraction

towards the west, it would inevitably be thrown into the mill-site, which would make that mineral ground, and it is admitted here that from actual surveys made for the patent in that case, admitted in this case, that there is not a particle of mineral in it, and that there could not be.

Here is a little diagram, if your Honor please, that shows it. Here is a large diagram. Your Honor will see the elbow. The point of intersection of that lode with the line is near the elbow, but it will be impossible without mineralizing the mill-site, for it to be put westward. It is admitted that it crosses exactly at that point.

I was speaking of the irregularity of our location. What shall be said of theirs? It is just as irregular. It does not cross any two lines that are parallel. If this is just reversed and turned the other way, we have our case all over again with this as the end line between the parties.

That brings me down to the final consideration of this case. The respondent in this case stands in the position, practically, of a mine owner with a patent. They hold the Land Office receipt, and being entitled to their patent they will be considered to have had it. We claim that it is too late in the day for the party respondent in this case to define any new end line between the parties to this action; that it has bound itself by one of the very instruments by which it acquired title; that it has bound itself as absolutely as it is possible for a person to bind himself by its own muniment of title, by its own document, which, under our law is just as sacred as is

a document and agreement under seal; and by the recitals set out in that document, made solemnly, with the knowledge of all the facts—it stands admitted here, without any fraud, deceit or mistake of any kind—they stand bound.

What were the recitals? I read the recitals:

“ And whereas, part of this claim as originally described and as hereby relocated, conflicts with the rights granted by the letters patent of said Providence Mine, said Lot No. 40. Now, therefore, so much of this claim, both for lode and surface ground, as originally designated, conflicting, or now conflicts with any portion of the surface or lode, claims or rights granted by said patent, is and are hereby abandoned.

“ Which portion of this claim so abandoned is described as follows ”——

Now, how careful they were in this matter. They were not content with simply abandoning anything that might be in conflict, but in order that no mistake might ever arise between these two neighbors, they specifically and definitely describe the particular portion of this lode and the particular portion of the surface which they waive.

“ Which portion of this claim so abandoned is described as follows: All that portion of the above described New Year's Extension claim for surface and lode, which lies south of the northern boundary line of said Providence mine; which runs north 43 degrees 10 minutes east across the S. eastern corner of this claim.”

Is that to have no effect? They recite the fact of the conflict between the two parties; they recite the fact that they conflict with the right granted by the letters patent. What rights granted by the letters patent? The rights granted by the letters patent to the granite lode? They were not in conflict with the granite lode for lode purposes. Their surface never touched the granite lode. What rights, then, did conflict? The rights of the patentees on the Back or Contact vein, the only vein which crossed the Champion territory from the Providence ground, and they specifically recite that there was a conflict both for surface and lode between the rights granted by their letters patent to the Providence people and themselves. It cannot be contended reasonably that the conflict that was referred to in that specific particular document was a conflict as to the rights on the granite lode. We got this Contact vein by virtue of this patent under the Act of 1872. We could not have got this Back or Contact vein without our patent, or without a location. We got it by virtue of our ownership under that patent. So that the rights that are referred to there as conflicting are the rights on the Back and Contact vein of Austin Walrath and his co-owners. Is that to mean nothing? That parties, after coming solemnly to the state of feeling that they will abandon something which they realize that they have no right to—shall these respondents, after something like eight or nine years, be heard to come in a court of justice and say, "Yes, it is true we announced " to the world under our hand and seal, and made a " public record of the document, that we had no claim

"to this lode south of the line running south 43 degrees west because it conflicted with the rights obtained by Austin Walrath and his co-owners under their letters patent"—shall they be heard to come into a court of justice after that long period of time and say to the Court, "it is true we did all that, but we didn't mean it; we didn't get any consideration." Not get any consideration! What better enunciation of the doctrine can be had than, as was stated in this case that has been cited so often here, that people have a right to purchase their peace; that compromises are favored; that litigation is expensive. But I submit to the court that when a man has bought his peace once he ought to stay bought.

And if your Honor please, the facts in this case are such as must inevitably call to your Honor's mind that this was a deliberate matter, a clean-cut recognition of the claim of the end line of the Providence people. When it came to their own working of this mine, they sent, as appears by the minutes that have been introduced here, their superintendent, John Vincent, with full power to let out those works. There was some point made as to the power and authority, as to whether the minutes were the best evidence, and as to whether anything not included in the minutes could be shown. Mr. Reddy has made a collation of the authorities on that subject, and will cite them.

MR. REDDY—Green et al. vs. The Ophir Copper, Silver and Gold Mining Company, 45 Cal. 522; Greenleaf on Evidence, 14th Edition, Section 113; Field on Corporations, 418; 74 American Decisions, 309-310.

MR. SMITH—Your Honor can see from the model, and from the mining map which is one of the exhibits in this case, the physical fact that speaks plainly to the eye of the object of the Champion Mining Company at the time that shaft was laid out. I don't say, nor am I going to contend to the Court that if that were the only fact in this case, that they have laid it out parallel and afterwards discovered something different, that they would be bound by it; but in conjunction with the fact of their abandonment under a document as solemn as one under seal, for the purpose, clearly, of avoiding litigation and disputes between neighbors, which I submit is a good consideration; when they followed that up for years by their workings in the same line, I submit that under the adjudicated cases an acquiescence of that kind, a performing of work and labor upon the theory of a certain line being the boundary line and submitted to for a period equal to the statute of limitations that that alone is absolutely binding.

Every drift that they ran to the south paused when it got to that line. The Champion people at that time said, "This far shalt thou go and no farther." But when that rich chute of ore pitched over at the 800 level into the Providence ground, impregnated with its gold and its silver, rich in everything that brings to man comfort and happiness, the temptation was too great and they fell like Lucifer.

I don't know, if your Honor please, if I have any right to trespass any further upon your Honor's attention in this matter. Let it be remembered that what I have said is simply for the purpose of putting as clearly as possible before your Honor's mind, our

position in the case, based, as we think, upon the proper construction of the authorities.

Whatever your Honor's adjudication may be in this, we feel that it will settle for all time a great deal that is now uncertain and undetermined. It will be remembered by your Honor that any construction of the rights of those who acquired ledges under the Act of 1872, in so far as the determination of end lines is concerned has been practically undetermined; it is a new field.

In conclusion, we submit to your Honor that the miner having no control over the situation, no earthly way under the sun to regulate his location, it came to him from the Government which had full knowledge, or will be presumed to have had full knowledge of every location, it came to him in its present shape with the right to pursue the ledge upon its dip, and the Court, under those considerations, will give to him the full benefit of what Congress meant that he should have. And in this case we wish to call the attention of counsel to the fact that so far as his clients are concerned, no injustice has been done them. For years and years this patent had been issued. Their first location was in 1877; they knew where this ledge crossed; they knew the boundaries of the Providence patent, or were presumed to have known it; there was no fact concealed from them; no disappearance of monuments; they knew the line; they knew the ledge that crossed it, and if they have failed, as we claim they have not, to have located their lines in conformity with that, the fault lies with them, because they were in possession of all the facts.

(Here a recess was taken until 1:30 P. M.)

Friday afternoon, June 1st, 1894, 1:30 P. M.

MR. SMITH—(Resuming). One little matter I omitted to call your Honor's attention to, and that is the subject of the newly-acquired title in relation of its effect in barring the defendant from asserting any claim to any portion of the alleged surface ground south. So far as that newly-acquired title is concerned it is simply confirmatory of the title which they had under their relocation. The relocation was the muniment of title upon which they relied, and the patent which will be issued to them in process of time will be a patent that confirms that New Year's relocation. In other words, the new title does not give them everything different from what their New Year's relocation gave them.

**Argument of Curtis H. Lindley, Esq., on Behalf
of Respondent.**

MR. LINDLEY—May it please the Court, I want to do my best to finish this argument to-day, and not do an injustice to the distinguished gentleman who is to follow me. I have two associates in the case—Mr. Searls and Judge Hoeffer. I thought perhaps Mr. Searls would present his views in the matter, but he has stated to me that he does not wish to make any argument in the matter, nor does Judge Hoeffer, and perhaps I may consume a little more time than I said I would. I want to do justice to my case; at the same time I do not wish to appear to consume time that ought to be given to my friend who is to follow me.

There is one little matter that I want to call up before we proceed, and I will ask the Court to please step down a moment and look at this stipulation map.

I direct the attention of the Court now to the course of the lode line running through the New Year's Extension, and also to the projection of the lode line which was eliminated by the relocation, and also to this matter here. This line is not the line that counsel referred to when they spoke of a divergence. The red line and the black line show the divergence of the extension of this line to the line parallel to that I call their north end line. It is not this line, which might be inferred from examining the map at a distance.

MR. REDDY—That is the line claimed by us.

MR. LINDLEY—This is the line claimed by you.

MR. REDDY—And the divergence is shown here on this line. In 258 feet there is a divergence of 150 feet.

MR. LINDLEY—Yes, but I am speaking now of the divergence of what Mr. Smith called two degrees.

MR. SMITH—Which we claim could not be accurately represented.

MR. LINDLEY—As a portion of my argument will be based upon the regularity of the location of the New Year's Extension, and the fact that the lode passes through both of these end lines that have been shown on the map here, and also a small diagram that was passed up to your Honor which shows that that lode line, instead of crossing exactly the side line, crosses a portion of this other line here, the inference being

that the line did not pass through both of the New Year's end lines, and counsel referred to this as the stipulation map. I have called the Court's attention to the representation of that lode line upon the map, and its being almost impossible, in my judgment—at least I argue—to determine from that surface may exactly whether it passes right at the junction of the two lines, or passes through this one or through that one. My attention is only called to it by the enlarged diagram presented here and the tracing that was presented to your Honor that there was any contention about where that lode line passed, or where the lode actually passed. Counsel has suggested that this is the stipulation map, and therefore that there is a certain degree of sanctity to be thrown around it with reference to the course of the lode delineated by the lode line on this map. Of course this map does not show that that crosses that line; and I wish to place myself squarely upon the record in this matter, and to simply read the admission with reference to these exhibits and what they purport to represent. When Mr. Englebright was upon the stand the following took place, and I think it is within the recollection of the Court: Mr. Reddy said, "Mr. Englebright, "you have been introduced to the Court, I believe, in "a case which has been just concluded?" I admitted his competency.

"Mr. Lindley—He is perfectly competent to testify "as an expert, and we will admit that.

"Mr. Reddy—Mr. Lindley, will you admit that that "map, 'Exhibit 1,' is correct, our map marked 'Ex-
"hibit 1'?"

" Mr. Lindley—If Mr. Englebright says it is, I will.

" Mr. Reddy—Q. Is it correct, Mr. Englebright?

" A. Yes, sir; it is practically correct.

" Mr. Reddy—Will you also admit that Exhibits 2
" and 3 are correct?

" The Witness—Yes, sir; they are correct.

" Mr. Lindley—I will admit that they purport to
" represent the surface boundary lines of the property
" before the Court, and that this map is stipulated
" and agreed to be a correct delineation of the surface
" boundaries of the property set out in the pleadings
" in this case."

Now, of course, I contend in all fairness that I was not admitting by that, that this correctly represented the true course of the New Year's ledge; so much so, that when I came to prove my case, I called Mr. Uren and examined him upon the course of that lode. I will simply refer to it to show the position I take in reference to the matter. This is Mr. Uren's testimony upon the subject (p. 71):

"Q. You are familiar with the ledge that has been mentioned in this case, and called the Contact ledge?

"A. Yes, sir.

"Q. How far can the outcrop of that ledge—or what portion of the outcrop of that ledge—is ascertainable from a surface inspection, and what is the general direction, and kindly mark the numbers on this map, specifying the direction in which you go.

"A. You mean the surface lines of the Champion and also of the Providence?

"Q. I am speaking of the outcrop of the Contact vein, commencing at point 'A', which is the point on

which the Champion incline shaft is sunk, and follow along a southerly direction, or whatever direction the line of outcrop may take, as shown upon the surface; or if you have to go further north to connect with the natural outcrop, proceed to do so. The Champion shaft is sunk upon the Contact vein, is it not?

"A. Yes, sir; nearly so, or within a very few feet of it. It is out of the foot-wall, if anything.

"Q. Now proceed.

"A. Commencing at the collar of the Champion shaft, at point marked 'A', extending southerly to 'D', as indicated by the blue marks, 'D' is the only place at which it can be found between those two points. "On Exhibit 'B,' at a point which I will mark '22,' where the Champion company sunk the shaft in the creek and run a cross-cut on the vein. That point is indicated on Exhibit 'C' by the letter D. It is then found at the southwest corner, or northwest corner of the chlorination works of the Providence. From that point on it was impossible to trace it on the surface further south.

"Q. What were the indications of the outcrop at that point near the chlorination works?

"A. There is an outcrop there of 12 or 14 inches of quartz.

"Q. You are familiar with the lines of the New Year's Extension, the northerly and southerly lines, are you not? A. I am, yes sir.

"Q. Are those lines parallel? A. They are.

"Q. Does the Contact ledge cross both of those lines?

"A. It does."

To which testimony there has been offered nothing in contradiction. If that had been by any wrongful intendment, if the testimony of that witness had a tendency to contradict the stipulation map, I think that the objection should have been made at that time, that it was contrary to a stipulated fact in the case.

MR. REDDY—Would you kindly look at the place where I was cross-examining the witness upon that point? You told me that the map was there that we had stipulated to, and showed the lines, or something to that effect, and admitted that the vein did not cross the mill-site, and that there was no mineral in the mill-site.

MR. LINDLEY—I will admit that.

MR. REDDY—Therefore I did not cross-examine Mr. Uren upon that statement.

MR. LINDLEY—Whatever the cross-examination of Mr. Uren shows with reference to that matter is legitimate for counsel to argue upon. Whatever has been testified there I am perfectly willing counsel shall use. I am simply stating my position in the matter, and the fact that I have called your Honor's attention to shows that line produced right through a point. It would simply be another application of the rule in the Tyler-Sweeney case if it was otherwise. It is a matter of no great concern, except to put ourselves squarely upon the record.

Another thing which I wish to call your Honor's attention to is that we are concerned primarily with what the complainant in this action got by his patent; not necessarily what we got, or what we did not get,

but as a matter of affirmative showing upon the part of the complainant in this case, it is their duty to trace their right to what lies within this triangle; in other words, they must show affirmatively that they have a right to that. Of course, when I proceed in my argument I shall show what I understand to be an affirmative right in the respondent in this action. But the complainant in this case must rely upon the strength of his own title, and not upon any inherent weakness in the title of his adversary.

The alleged trespass, with the exception of this drift upon the 800 level of the Champion, has never crossed the vertical planes drawn through the Providence surface lines, and of course it is a matter that is entirely upon the complainant to show his right to whatever lies outside of planes drawn through his surface lines. Such portion of the invasion of their territory underground as has been shown on the 800 level by the Champion company, as to that part a certain presumption may be raised in favor of the complainant in this action, unless we affirmatively show our right to cross that vertical plane. But beyond that, this is all outside of the boundary lines extended downward by vertical planes of the Providence company. When I speak of the Providence I mean Mr. Walrath, who was one of the co-owners and maintains this action.

So with the exception, perhaps, of that little drift in there on the 800 level of the Champion the presumptions are all against the complainant here, because they are outside of his vertical planes, and he must show affirmatively a right to pursue his ledge

beyond his side lines, or beyond the vertical planes drawn through his surface lines. Consequently we are concerned, primarily with the rights of the complainant in this case, independent of the affirmative showing on the part of the defense.

Counsel, in his opening argument, was traversing my argument in the Wyoming case. What I said in the Wyoming case, I certainly am not ashamed of, and if counsel is so good as to consider it, it may be taken by the Court as part of my argument in this case. These gentlemen have both been in attendance, and I don't want to repeat to the same Judge who was trying the same facts, territory that I traveled over then, except to draw the distinctions which I promised to draw when the Wyoming case was under consideration.

We have here a location, a piece of patented ground; a ledge patented, if you please, with a delineation of the extent of their surface rights; patented under the Act of 1866. It is true, as counsel says, that the granite ledge was patented for a longer distance than is included within what I will call, for the purpose of reference, their diagram. But when we understand and consider the decisions of the Supreme Court of the United States that end lines were just as much implied by the Act of 1866 as they were by the Act of 1872, and when they post their diagram, proceed to patent, and a patent is granted which exhibits two lines substantially parallel, crossing the patented lode in the ideal form, it is our contention, of course, that those are the end lines of the location; strictly so, because they perform the functions of end lines. The end lines of the location terminate their surface rights at the two

points north and south; and I take it that since McCormick vs. Barnes, and Wolfe vs. The Lebanon, and the Flagstaff case, it is now too late to claim that another end line must be drawn where their lode right upon the extension, some of it beyond here and 600 feet south, should be drawn. If such an end line were to be drawn it should be drawn according to the decision of Judge Field, at right angles to the lode, and at those points, which I understood counsel to practically admit upon the oral argument before Judge McKenna, would be the direction of their end lines. But, if he had not obtained a patent for surface ground he certainly would not have been entitled to anything under the Act of 1872, because there could not have been any lodes or ledges within his location. It stands to reason that if a naked lode line or a naked lode was patented as it was in the Idaho case, which I had occasion to refer to the other day, he would not be claiming any right to any other lodes or ledges within his boundary, because his boundaries would be the lines of his ledge.

MR. REDDY—I agree with counsel upon that.

MR. LINDLEY—It is only by reason of the diagram which he himself constructed, and constructed of course solely with reference to the granite ledge, that he gets anything at all in the shape of other ledges.

I have discussed in the brief that is on file here the true theory of the application of the law to the facts of this case. We have here a patent under the Act of 1866, which, unlike both the Wyoming and the Ural patents, has parallel end lines, and, therefore, under my construction of the law, they are entitled to con-

struct an end line plane, because the lines of the surface, the end lines laid upon the map, laid upon their patent, are those that are to control, under the document of Tyler vs. Sweeney, with reference to such lodes as may be found to penetrate or cross any of the other boundary lines. And for that reason I do not wish to deprive the complainant in this case of an extra lateral right. What I do say is, that the line BB or BDG, and that line produced, was not the end line of their location. It becomes an end line for certain distinct purposes by reason of a fact, the existence of which was not contemplated or known at the time that the original patent was granted, and the patent to which did not convey any right whatever. Consequently, under no circumstances, can B G be considered the end line of the location, because it performed none of the functions of an end line with reference to the lode that was patented. And I may say, in the use of the term side lines, that I say that all lines of a location which are not end lines are side lines, and I use that term "side lines" as applied to this line B G simply because it is not a line that is crossed or intersected by the granite ledge, the ledge upon which the patent was issued, and that for the same reasons that the lines which do in the ideal way cross the patented ledge at right angles are the end lines of the location within the meaning of the Act of 1872, which conveyed to these gentlemen the right to pursue the other veins upon that dip, and we cannot have but one set of operative end lines within a location. We cannot have end lines running in all sorts of directions; and I understand that the logic of Tyler vs.

Sweeney upon that proposition is certainly a full demonstration of that, and I do not think that it has been overruled in the Silversmith case by the Supreme Court of the United States.

Let it be clearly understood that whatever rights these gentlemen had by virtue of their patent are absolutely conceded by the respondent in this case; but no more.

Now, let us refer for a moment to the abandonment of the complainant, and the notice of relocation. Of course, we are here now with a patent which possesses the same attributes and the same operative force as the patent of the complainant in the case; and whatever matters *in pais* occurred prior to that, your Honor will bear in mind. If there was an abandonment it was an abandonment to the Government; it was not a compact between the two parties; it was a compromise alone; the minds of the two companies never came together. There was simply an abandonment to the Government. And when I speak of an abandonment, I wish to call the Court's attention to the existing state of facts as shown by the complainant at the time that that abandonment was filed. Mr. Smith, in his opening argument, emphasized the abandonment for surface and lode purposes. Your Honor will bear in mind that the recital in the relocation asserts the existence of this patent, and it is manifest from this diagram, at least, that the claim on the length of the lode also ran over into the Providence ground and that the surface boundaries created a conflict area. It was perfectly manifest that they could not follow that lode upon its strike into the

Providence patented ground on its strike. It was perfectly manifest that the Government could not give title to the same piece of ground but once, and consequently that the conflict area had to be eliminated before we could proceed to patent. And this abandonment is simply the abandonment, and should be so construed by the Court, if it is going to consider it at all, as the abandonment of such things as either might be the proper subject of an adverse claim, or the abandonment of such things as manifestly showed a conflict with a prior patented mine. Location notices, abandonments, relocations, amended notices of location, the construction of lines, the marking of boundaries, all refer to surface conditions. The question of the ownership of the ore body underneath the surface of the earth in the pursuit of a lateral right is never the subject of an adverse claim. They can simply say, "well, you get whatever rights the Government gives you by surface lines, and your rights underneath the ground are determined by the status of your surface location and the relative position that the lode within it occupies to your surface ground." So that I say that that abandonment, reciting as it does the existence of the patent, when it says that it abandons not only for surface, but lode purposes—in this distinction they seem to follow the old distinction between the lode and the surface ground adjacent to it—means that it abandoned so much of the lode as passed into the Providence ground upon its strike, and so much of the surface as conflicted with the Providence patented survey. But the relative rights of the parties as to following the vein on its downward course

could not possibly be the subject of a location; could not possibly be the subject of an adverse claim, and consequently the parties are now in a position to have that determined by this court. It is conceded by both parties that this is the same vein and apices within both grounds. I take it that the instrument relied upon here which cannot be used to control or collaterally assail the patent which the Champion company now has was nothing more than an abandonment, a release, so far as they were concerned, of anything within the Providence lines that was properly covered by the Providence patent, and nothing more. If the right to follow upon the dip within the plane drawn through the side line and extended in its own direction was a right preserved by that patent, it is entirely immaterial whether we abandoned or located or anything. It makes no difference whatever. What I seriously object to in this matter, is the extension of a side line indefinitely around the earth, when it establishes a new set of end line planes which are entirely against any rational contention that can be contended for with reference to the original ledge that was patented, and the original end lines that were located upon the premises.

So we say that under their patent the Court must take their end line planes and apply it at the point D where it crosses the Providence into their ground; where it passes into the Providence ground. Now, the relative course of that vein between A A—the exact course is only determined up to the point under the chlorination works. Evidence has been introduced before your Honor to show the problematical disap-

pearance of this ledge across another side line. But it is entirely immaterial. We do not have to show where that ledge goes in order to assert any right in this case. If it goes through this end line, we have there another illustration of the doctrine of *Tyler vs. Sweeney*. You would have to take that end line plane and apply it at that point, otherwise you would have 1500 feet, or 3000 feet of that ledge on its strike, and the length of it increasing every foot as you went in depth, which would give them a very much larger amount of the ledge on the downward course than they have apex for on the surface.

Now, so far as the suggestion that we never have crossed the Providence end line produced—this line produced, it must be apparent to the eye of the Court upon the subject that the Providence people have never, except in the extreme lower levels here, gone out of the vertical planes drawn through their surface lines; and because we terminated our rights here we have not approached anywhere near that plane, except from the 700 foot level down. The fact that we did not follow this intervening space of ground is probably accounted for by the fact that the ore did not pay, because we have lots of room here before we get up to the assumed end line plane; lots of stopping room. So that is not a matter to be considered; and even if it were, of course the patent given to us in 1890 gives us everything for which we have a proper apex. I understand the rule to be enunciated in the *Colorado Central vs. Turk* that where a location is made in the form and manner that that is, where the ledge passed out of a side line, that the right conveyed to the party

is subject to the right of a junior locator who properly locates upon the apex to follow that vein down within the planes drawn through the end lines. In other words, the Act of 1872 granting these people the Contact ledge which lay within their boundaries, granted only a limited right; the right of an adjoining proprietor to follow underneath the surface any ledge or vein which apexed within his ground, and the location of which was a regular valid location. I mean by that, a location with parallel end lines, and a ledge crossing both of them, passing out of both end lines; and that whatever rights were granted to the Providence people by virtue of the Act of 1872 were subject always to that limitation. The matter is discussed in the brief that is on file, except that I did not cite the case of Colorado Central vs. Turk. I had proceeded upon the theory, up to that point of time, that the reasoning developed there in the brief, supported by the authorities, was an absolute demonstration of the right of the Providence people upon this Contact ledge.

I want to illustrate by this model something that is better illustrated than on the map, though the lines are on the map. There are no surface workings of the Providence people at all upon this Contact ledge. The Contact ledge is reached by the Providence people exclusively by cross-cuts driven back from their granite ledge, right on to the foot-wall of the Contact, one at the 600, driven right through the country granite, as testified to by the witnesses in the case, and the other, the 1250, driven right back. So that there are no surface indications of the fact that the Providence com-

pany have ever been working that Contact ledge. It has to be reached by these cross-cuts back from the granite ledge to the Contact, and, of course, so far as the contact of the parties in this action is concerned, there was nothing to indicate the position that the Providence people took, really, until they broke into our workings, that is to say, the workings that we were carrying on in the lower levels of the mine. Your Honor will see that we are a long ways off upon all these levels from what they call their end line produced, and this is all outside of the Providence surface ground. This is all outside of the Providence surface ground, and until a very recent date there had been no levels of the Providence at all extended across this surface line, what I call the true north end line of the Providence; and both parties have been pursuing their own judgment and following the ore chutes, if you please, because the ore chutes are what the miners follow. The fact that they have stopped these drifts where they have, indicates nothing except that there was nothing for them to take, and as the ore chute pitches into the ground wherever it is found and stringers discovered, they naturally extend their drifts; and, as counsel mentioned, it is the ore chute that the Champion company have operated upon, and that the Providence company now claims belongs to it by virtue of this extended side line; the side line produced in its own direction.

Something was said about the question of priority of location, and something was said by the Court in *Tyler vs. Sweeney* about the priority of location; that is to say, that two parties could not lawfully occupy the same space of ground.

I wish to call your Honor's attention to an illustration on page 24 of the Brief in connection with this argument. What I understood the Court to mean in *Tyler vs. Sweeney*—of course, in that illustration A is the older locator, and B the junior. They both have regular valid locations; they both have parallel end lines, and the ledge, which is the same ledge, passes through the end lines of both locations. Of course B gets the ore chute, or obtains the dip of the ore chute, or finds it out by subsequent underground developments, and in pursuing his vein upon its downward course intersects a vertical plane drawn through A's end line. Of course A, by the priority of his location, has properly covered all lying the other side of that vertical plane, and it belongs to him, though B has a perfect valid location; he is junior in point of time, and is cut out. That is all I understood to be meant, and that is all the dignity that is to be given in this case to priority of location. It resolves itself down simply to the proposition how much apex have these respective parties in this case, and then what bounding plane shall they follow their planes upon the dip. That is all there is to it. This is a hypothetical case. I want to say that in preparing this brief, which contains a number of illustrations, I did get some considerable enlightenment from a very interesting monograph written by a mining engineer by the name of Heinrich, and delivered before the Institute of Mining Engineers; a monograph called side lines and end lines, speaking particularly of the Act of 1872, and also from an illustration made by Chief Justice Beatty when he so ably and

intelligently sent that response to the Public Land Commissioner upon the question of the operation of the mineral land laws as they then stood. It is reported in full in the first report of the Public Land Commission, which illustrates, as I say, this question of priority of location and conflict on underground planes. There is an instance where, of course, both parties have unquestioned rights and have unquestioned apexes, but the older locator takes his vertical plane where it crosses the ore chute.

Now, our contention in this matter, or our notion in this matter, is, that there are two reasons why we should be permitted to follow this vein within vertical planes drawn through these end lines, or lines that are approximately in the same direction as our end line. If you take a plane constructed at the point D, where the ledge crosses parallel to the Providence end lines, and also a plane drawn through our end line, there is where you would have the divergence of the 2-degree line that Mr. Smith spoke about. It is about $2\frac{1}{2}$ feet in 100, and upon a 28-degree variation, which I understand from our surveyor is the variation, it would be about a foot in 300, showing that these lines are practically coincident. There is nothing to be gained from the coincidence that I know of, except that either theory—either upon the theory of the end line plane of the complainant applied at the point D, and the end line plane contended for by us on account of our proper appropriation of the apex we get substantially the same result. In other words, the end line plane contended for by us would be either the end line plane

of the granite ledge applied at that point for the extension of our own end line.

And another matter of coincidence which, in the early history of the adjudications upon these subjects would also have set some figure—it would with the trial court in *King vs. Amy*; not the Supreme Court of the State—it is at right angles to the lode, or practically so. So there is a peculiar coincidence, that you can take either horn of the dilemma, either the right angle theory, or the theory of the parallel planes of the true end lines, or our end lines produced, and you get the same result; and, of course, it is entirely immaterial to us, so far as practical results are concerned, which theory may be adopted, so long as we are protected in substantially what we claim.

The authorities upon the question of the newly acquired title have been submitted to your Honor, and I thought that I had an extra copy for counsel in this case, but I have informed them that they shall have it, and if there is anything that they think they wish to present, they have my permission to send to your Honor any authorities upon the subject.

I will not read from the case of *Colorado Central vs. Turk*, except, perhaps, one extract. This was on an application for rehearing before the Circuit Court of Appeals in Colorado. I have simply extracted the language of the Court. "Finally we must
" correct the false impression which counsel seem to
" entertain, that we have misconceived or failed to
" consider the question intended to be presented in
" the 12th and 13th instructions." You will see by the context what they referred to. "We fully under-

“ stood counsel to contend that the Colorado Central
“ Company, by virtue of its prior location, could law-
“ fully lay claim to all ores within its side and end
“ lines which formed a part the lode on which its lo-
“ cation rested, even though the apex of such lode and
“ the course of its strike to the southwest had event-
“ ually crossed into the *aliunce* territory, and had been
“ there discovered and located upon by a proper
“ later claimant. We intended to overrule that con-
“ tention, and we thought we did so with sufficient
“ certainty in our previous decision.” They empha-
size that proposition of the status of the prior locator
with reference to an apex where it crosses a side line
and goes into other territory.

Of course your honor will understand that the brief
that is on file in this case, was intended to cover the
state of the law as we then found it. Since then has
come the decision of the Supreme Court of the United
States, which has decided the Amy case, but which has
not removed the logic of Tyler vs. Sweeney, according
to our interpretation, and simply placing the Silver-
smith case in the same category as the Argentine case
and the Flagstaff—

MR. REDDY—Simply confirmed the law as we stated
it to the Court.

MR. LINDLEY—I think I have finished. There is one
illustration I omitted; it is not of very great import-
ance. I simply wish to illustrate what I call the *re-*
ductio as absurdum, and call your Honor’s attention to
the planes that are drawn here. Assuming that the
ledge departed from the point “A,” the construction
of parallel planes parallel to the end lines at the point

of departure, of course would give these gentlemen the same segment of ledge of which they had the outcrop; but it was wherever it crossed outside the side line. This ledge dipping to the east, an end line plane drawn in that direction, and in that direction of course would give them a very broad extent of lode as they went down in their downward course; and counsel is not authorized, by anything that is adjudicated in the law, to say, "because this line, which was in one of " the original end lines of the location is crossed by a " lode, that the Court shall arbitrarily take that line " and apply it at that point," because it is not one of the end lines of his original location.

**Argument of Patrick Reddy, Esq., on Behalf of
Complainant.**

MR. REDDY—May it please your Honor, I will refer to Exhibit No. 1 for the purpose of illustrating in my own way what I consider end lines.

That the lode M N was properly located there can be no question. The patent is conclusive of that. That the patent granted the lode for the entire length of 3100 feet stands unquestioned.

Now, if I understand counsel aright, it is claimed that the line to which I point was the south end line of that vein.

MR. LINDLEY—No; the south end line of the location.

MR. REDDY—While I am not repeating you exactly as you expressed it, it will come to that, practically. If you wait a moment, I will show you what I mean.

Now, can that be the end line of the lode? Certainly not, unless you can make an end line in the middle; unless you can place an end line arbitrarily wherever you please. The length of this lode is fixed. M is the north end, and that is the point where the owner of the ledge would be compelled to stop under the law. He could follow his ledge no further, and I take it to be the law that he may follow that ledge regardless of these surface lines; that he may follow that ledge from M to N, and there he must stop. That marks the place where the miner must cease in the pursuit of the lode.

Now, under the Act of 1866 that is the only office which end lines perform, namely, to fix the point where the miner may begin, and the point where the miner must stop in the pursuit of his lode. Whatever may have been said in the cases referred to by counsel, it is in the Elgin case the Supreme Court distinctly said, and clearly, as they always do, that end lines cut no figure; that the Act of 1866 required no end lines in the sense in which that term is now used, and in the sense in which it was used in the Act of 1872. In 1868, the expression "end lines," concerning the length of the lode, of course naturally fixed the place of beginning, and the place where the miner must stop; and that is the only purpose that they served unless there was some local law or rule which required them to take up a piece of ground, and to continue that surface the entire length of the lode. That was the case in the Flagstaff case. That was the state of facts in the Flagstaff case; that although the lode was located

under the Act of 1866, nevertheless the mining rules and regulations of the district required that surface ground should be taken up for the entire length of the lode, 100 feet on each side of the middle of the lode. It was a mining rule and regulation, and that rule was just as firmly fixed by the miners and was just as binding as if it had been passed by Congress, because the Act of 1866 affirmed all those rules and regulations. But in this case the vein was located before the Act of 1866. But claims 3100 feet in length were affirmed by the Act of 1866, where they were taken in pursuance of the miners' rules and regulations. We obtained a clear and undoubted right to this vein. Now, if this can be drawn as the end line, we lose 600 feet on the south, and, the same rule applied, we lose 30 feet on the north? The Government having granted that to us by patent, has counsel any authority for the Government taking that away from us by any subsequent legislation? Is there any subsequent law for saying that we have not as good a right to the 600 feet which runs south of that line as we have to any of these lines? Certainly there can be no question about our right to that vein and to follow it down to M. If that be true, how can this be an end line without cutting off 600 feet of that to which the Government has already given us title. I can see no answer to that, and counsel may answer me at any time, is there any law or rule which will take away from the patentee that ground, that 600 feet, because of subsequent legislation by Congress? First, Congress has no power to do it, and second, Congress never attempted to do it, and lastly Congress meant and intended nothing of the kind.

Now, the lode was granted. Under the miner's rules and regulations where it was permitted; surface ground might be taken, but evidently under the rules in force in this district it need not be equal on either side of the lode. It might be irregular in shape; it might be square, crossing the lode; it might assume any form, allowed by the district laws. This form was permitted, evidently. Now, we have established our right to the lode for the 3100 feet, and I need deal with that no further. That continued to be our right until the Act of 1872. We had the right to that lode, but we had no right whatever to this lode. Anybody might have located that ground notwithstanding our line, for the exclusive possession was not given of this surface, but simply for a special purpose, as was said in the Eureka case, and as has been followed all along the line, that that was given for a special purpose, and did not carry with it any other veins or any other rights than the right to use that for milling and the necessary mining purposes; and anybody else might come in and use it for the same purpose, if it did not interfere with the right of the locator of the vein. It was free and open, except this one right reserved to the miner, namely, for the necessary purposes of mining.

The Act of 1872 did not attempt to take away from the miner any rights that were conferred by either the miners' rules or regulations prior to 1866 of any right acquired under the Act of 1866. I apprehend there will be no question about that. But an additional right was intended to be granted by the Act of 1872. What was it, and to what did it refer? First, what was it? All of the veins or lodes, the top of which

were within the surface lines of their location. What location? When they spoke of their locations, and referring to those who had located prior to the Act of 1866, and those who had located prior to 1872, did they mean precisely the same thing; the location that was to be made thereafter? No; there is a broad distinction. In the first place, the Act of 1872 gave to the miners who had made locations prior thereto all the veins within the surface lines of their locations; that is to say, the locations which had been made prior to that time in accordance with law. Can there be any question about that? The Government was well aware, and was presumed to be well aware of the form of the location, but notwithstanding that form, the Government, in the first instance, granted the surface ground expressly, as you will find in the patent. After granting the lode then, by express provision, and by special description they gave this surface ground. Then they knew that this was in the form which we have presented here. And knowing that form what was the grant? All the veins or lodes within the surface lines of their location, or that location, in other words. If that is true, then, that they granted all the veins within the surface lines of locations which had been theretofore made, Congress meant exactly what it said. And what was that? That every vein found within these lines, and within these lines was the property of the owner of the location. And when Congress spoke of the surface lines of their locations, it had reference to the surface lines marked here and the surface lines which were specially pointed out and described in the patent. It was not a parallelogram

such as was required to be made in claims thereafter to be located, but in every case it was their location, referring to the claims theretofore made. Is it necessary, then, under that view of the case, to have a parallelogram? Evidently not.

Now, then, all the veins are granted within these lines without reference to its form. Of course, under the Act of 1872 the end lines must be parallel, but in the 118 United States, the case that I have just cited, the Elgin case, they held that it is not necessary, and was not called for under the Act of 1866 or locations prior thereto. For the first time was parallelism required by the Act of 1872, and of course it applied only to future locations made thereafter, because if it applied to locations made prior to that time, as I understand Mr. Wright and my associate have both argued, if it was intended in that way, then there would be but a very small percentage of claims which would reap any benefit at all from the Act of 1872. If the Act of 1872 intended to allow nothing but parallel claims, or nothing but claims which had parallel end lines, why then no benefit would have been conferred. But yet it is plain that the intention was to confer a benefit, and to prevent litigation, and prevent one man from invading and working a claim so near as claims of this character must be; because litigation must arise, and you have an instance of it here in the Wyoming, where they are so near there is danger of their intersecting and consequently giving rise to litigation. So it was thought better to give all the veins within that compass, or within that area, and thus avoid litigation.

Now, was there any condition that the claims theretofore located should have parallel end lines? If not, why do we demand it? Why should we interpolate a condition into the statute which the lawmakers did not put there? Now, I have only one other remark to make with reference to these end lines, and that is that outside of the surface lines nothing was granted. If a vein existed, and if there was a vein on each side of this one, and running parallel with it for the 600 feet south, we would have no title to that now any more than we had before the Act of Congress; thus showing that it was impossible to apply the act to such a case as that, and hence the party must have surface ground beside his lode and surface lines marked out in order to enjoy any benefit under the statute. It is only in such cases that any benefit can be obtained. Counsel, I believe, are agreed upon that proposition.

Now, is there any condition in the Act of 1872 that the veins other than the original vein shall be parallel with the other, if not, then it should not be interpolated. If there is any such provision as that in the mining statute, why then the benefits to be conferred upon the miner are very few, because it is rare that you will find veins running exactly parallel so as to come within the provisions of such a law if such a law had been passed.

Suppose a square claim. I believe I will do this map no harm to draw a line above. Suppose a square claim, surface line. The original lode extends in that manner through the square surface ground. Would a man have any benefit at all of such a vein if parallelism was required in that case? He could reap no

benefit at all, because it is not parallel with the vein, nor does it go through lines parallel with the original vein. Hence parallelism is not required in such cases, otherwise it defeats the objects of the act; it would otherwise defeat the entire intent and purpose.

Now we will suppose that a vein crosses in that manner. Which is the end line? It is square. Who will tell me what the end line of the surface location is? It is an impossibility to tell which is the end line unless there is some rule laid down by the courts or in the act which will enable us to determine. Here are three veins within the same surface lines. We get no benefit from this under the rule, and we couldn't touch this at all.

In the case of *Wilhelm vs. Sylvester* that question is taken up, and is dealt with in a clear and concise way, and manner that cannot be misunderstood. It is said in that case that the language of the statute is clear and explicit; that there can be no misunderstanding of it, that all the veins within the surface lines are given to the locator, and it is the surface lines by which we are to determine what his rights are in the lodes granted by the Act of 1872.

Which are the end lines here? All these veins are granted within this surface. We may extend out here and find a vein here. We have a vein here, and we may find others. Which are the end lines? They are given without any statement any requirement of parallelism or anything about the end lines so far as the ownership of the veins within the surface lines drawn downward vertically. But I am speaking now with reference to the so-called outside portions as they are

called in the statute. A rule has been laid down which relieves us of all question. The Amy case—the last case as far as I know decided by the Supreme Court of the United States—lays down the rule by which we can make no mistake as to what the end lines are. It is the line of the claim crossed by the vein, or the line which crosses the vein. I apprehend we need not question the angle, but the line which crosses the general course of the vein marks one end line. We have, then, here, the vein. We have here a line which crosses the vein on its strike. Have we not then a definition which will enable us to say whether this is an end line or not? It must be the end line of that vein. Why? For the reason just stated. Counsel in his brief, and counsel in the oral argument admitted that it was the end line, and it is also admitted in the answer that it was the end line of the New Year's Extension. Well, why is it the end line? Why not call that a side line, too? Isn't it in precisely the same condition that our line is in? Is it not a line common to both locations? It is crossed by the vein, and if it is the south end line for the New Year's Extension, and the ground claimed by the defendant, certainly it must be an end line for us. We think it is impossible for any one to maintain logically that it is the south end line of the abutting claim, and not the corresponding end line of the claim abutting or adjoining. Can we find any definition which will prove that that is anything except an end line for both claims? Now that it is the south end line of the New Year's Extension as relocated, in the notice

of relocation, it is said—it was expressly declared in the notice of location that “The
“ lode line of this claim as originally located, and
“ which I hereby relocate, is described as follows:—
“ Commencing at a point on the northerly bank of
“ Deer creek, which point is 80 feet S., 11 deg. 45 min-
“ utes East of the mouth of the New Year’s tunnel,
“ and running thence along the line of the lode to-
“ wards the N. E. corner of the Providence mill, about
“ S. 46 degs. 15 minutes East, 200 feet more or less, to
“ a point and stake on the northerly line of the Provi-
“ dence mine, patented, designated as Mineral Lot No.
“ 40 for the south end of said lode line.”

I apprehend we have said enough in the brief upon the question whether that is an end line or not, and I have cited authorities, and therefore I will not take up time in oral argument of what I have presented fully in the brief.

Now, I think we have established the rights of the complainant; what he owned, what he claimed; and all this is conceded. That we are the owners of all that we assert ownership to is admitted in the answer. That we are the owners of all the veins and lodes within, etc., as described in the bill of complaint.

Now there is some dispute, if your Honor please, with reference to where the vein crosses. It was stipulated that this map was a correct map, and this map shows that the vein crosses the Providence north line which runs south 43 degrees west. That is our boundary line. That is what we claim to be our end line here; the same here. We claim that to be our boundary line. Now the vein as shown on this

map crosses that line and crosses no other as an end line. It does not cross any other line that can be called an end line, or any lines south of where the vein enters the New Year's Extension. That is unquestionably the line in my mind; but I will meet now the statement of counsel. Do I understand him to say that that is not an end line? I ask counsel what his contention is. Does that vein cross the Providence line running south 43 degrees west or not?

MR. LINDLEY—That is admitted in the answer, that it crosses the line. It also alleges that it crosses the southern end line of the New Year's Extension, and passes into the Providence ground.

MR. REDDY—I think I understand counsel and it is admitted that the vein does cross the Providence line running south 43 degrees west, and that it is east of the mill-site and does not run through the mill-site. If that is the fact admitted, I need not adduce my proof, but for fear that there might be any misunderstanding of it I simply call your Honor's attention to the map attached to the petition for removal, and when I offered it in evidence, I asked counsel if he had any suggestions to make or objections to the map, and he said no, that what was said there was a true representation, or to that effect; and there it is; it shows precisely the same thing; crossing the Providence boundary line which has been named, and east of the mill-site. Here is the map used for application on the injunction, which shows precisely the same thing, put in by the defendants themselves. The map that was on the rack there a few minutes ago, brought in by ourselves, shows precisely the same

thing. The model in the Wyoming case shows precisely the same thing. When Mr. Uren was put upon the stand and I commenced to question him and asked him incidentally a question about the mine, he started out to say that it went further west; but there was his own map which he had sworn to be correct, showing precisely the same thing. Here were all of the maps. There was no dispute about the line at any time or at any place until Mr. Uren said something about it, and when I was cross-examining him with the view of calling his attention to these very maps which contradicted him, then it was that counsel said, "Why, there is no question about that", and called my attention to the fact that this was a map stipulated to be correct, and I supposed that there was no use examining a witness when we had already stipulated these facts.

But last, and not least, comes the point that the respondent says he has a patent and that the map represents the patent. Then are they not bound, and are they not estopped, and have we not stipulated that they owned the ground just as it is shown on that map, and that that is a true representation of what the complainant claimed, and what the respondent claimed? So that it seems to me there can be no question about where the vein crosses the line. And last, but not least, it would not lie in the mouth of the defendant to come here after having sworn as he must have sworn, to get that certificate of purchase of the mill-site, it would not lie in his mouth to go there and swear that it was non-mineral, and then come in here and try to get somebody to swear

that it was mineral because the vein ran through it. We claim that it is clearly established here, if your Honor please, that the vein does not, in fact, could not, by reason of the estoppel, the oath that the defendant has caused to be taken concerning it, and the law of the case, the vein could not run through any part or portion of the mill-site. If it did, then the consequences might follow; but it was not contended that it ran through any part of the mill-site. When I started to show by Mr. Vincent, that this line to which I now point, extended down to the Providence line, I was not permitted to do it. I do not speak of that in the way of complaint, or anything of that kind; but Mr. Lindley very properly called my attention to it, and your Honor intimated that, of course it being stipulated that the defendant owned this ground, and that this map truly represented it, I had no right to cross-examine the witness; and in order to be sure about the matter, in order to be sure that I was making no mistake, Mr. Lindley said, "You are bound by that map; you are bound by the stipulation." The Court agreed with him, and properly so; and I then asked Mr. Lindley, "Does this vein run through any part or portion of the mill-site?" And Mr. Lindley, almost indignant that such a question should be put, "Why, no, it is non-mineral—the mill-site, the vein does not run through it." That is the substance; I don't mean to repeat the language.

Now then, we think by every rule we have fully established that the line crosses, not through the mill-site neither of its boundaries, but away to the eastward of the mill-site, so far at least, as to clear it from

the imputation that it contains any mineral. Then if it does not go through the mill-site, of course it is plain that it is the other line which it crosses.

Now it is a good way to argue sometimes, to put a question, not expecting it to be answered. By way of argument then, is the line marked C E the same as the line marked C B? Of course it is plain that it is not. Here is the mill-site here; and the green line shows the New Year's Extension, and the point of intersection of these various lines, and it is plain that the vein does not cross C E, but it does cross another line marked C B. Which line will fix the end plane? Is it the line C B, which it crosses, or the line C E, which it does not cross? I need not argue that further. I take it there can be but one answer to that that the line which crosses the vein is the end line according to all the definitions, and the line which crosses the vein in this case is C B. That, then, must mark the southern end plane of the New Year's claim. If it does mark the southern end plane of the New Year's Extension that ends it; that ends all question here. It shows that their extra lateral right—their right is to prolong this line C B, and the other has nothing at all to do with fixing an end plane.

Now if parallelism is claimed by counsel as a right or as a means of obtaining or fixing the extra lateral right, what does the line marked C B parallel? It certainly does not parallel any line of the New Year's Extension; it stands alone. Therefore, if the counsel's own doctrine is applied, he has no extra lateral right. I am well aware that we must recover upon the strength of our own right. I will apply this point

in a moment. If the defendant has no extra lateral right; and that is the line—if that is the line, they would have no extra lateral right according to their own doctrine. Now, if they have no extra lateral right, they cannot object to our making our south end line parallel to the line that is here known as an end line for the vein. They cannot object, because we do not take from them by that means that which they have not; in other words, we cannot take it from them, and we have a right still to make our south end line parallel with the north end line, and thus have our extra lateral right, if parallelism is necessary, because we can parallel, and we can draw our line to suit ourselves, or to suit the law, or the requirements of the law, so long as we do not infringe any other man's right. It is still, so far as that is concerned, open to us to change our boundaries and draw our lines so as to make them parallel, and conform to the views of counsel. If an extra lateral right had been acquired here by the other side, that question might come up then, as to whether we could so change our line as to attempt to take to ourselves extra lateral rights upon the ground to which they had already obtained some right; but that question cannot arise here, for the reason which I have stated. In no view of that situation could they have any extra lateral right.

Now, this is an important question, I think. Your Honor will see that this line C is the same as A C B upon the other map. It is plain that the line A C B diverges from the line E C 151 feet in the distance of 258 feet. They diverge very rapidly as you will see.

This marks the distance, measures the divergence between the points. The same thing would be measured out here, but it shows that it is not a mere variance, but a most important one, clearly shown here by the measurement and quite apparent on this other map which I have just exhibited.

It is unnecessary to occupy time with reference to the location of the vein. Here it is shown, and it is agreed, and I understand it was shown in the Wyoming case, that the vein passed through the east side line and the south end line of the New Year's and continues in the course designated here, and that is stipulated to be correct. That is as far as we need trace that vein. We have one end line there, and the other end line, as long as that vein remains within our lines is unimportant, really, in this question, for the reason that the defendant has no extra lateral rights and is not in a position not to contend for them. I don't know that I need spend any further time in illustrating to your Honor our claim or contention upon that point. It is clearly illustrated, I think, by this map here.

Now there is the situation in which we find these parties before any question can arise about the agreed lines, or any conflict between the parties. Our first acquaintance with the defendant was when it invaded patented lines; when it, or its servants entered and attempted to locate property that had already been patented and had gone within the side lines as shown by the purple upon this map. There was a conflict claimed. That there was a conflict is recited in the notice of relocation of this claim. It was realized by

the defendant that no such claim could be maintained, and in order to straighten out the lines and prevent litigation they declare that there is a conflict existing, in their notice of location; in other words, that there is a dispute about that line. It is so declared by the defendant, and the defendant cannot deny that there was a dispute between the parties, and in order to end that dispute, in 1884, years and years before the trespass was committed, they made the location which has already been shown, and in the manner stated, fixing the line which the Providence now claims as its end line—fixing this line in other words, as the end line of their claim, in words clear and explicit. They re-located, so as to abandon all of the ground south of this line, and declared where their south end line was, and it was upon this line. That fixed and fixed in accordance with law and fixed in a way that is binding upon all the parties. We have cited authorities upon that point, and do not deem it necessary to go further. So that according to their written declaration, according to the patent—they say they have applied for a patent to this ground, and here are the lines. Here is what they call their south line, and bounded by the Providence line. That is, then, a common end line to the two claims. How can there be any question about that? It seems never after the relocation to have been disputed. They knew then where the lode was, “to a point and “stake on the northerly line of the Providence mine, “patented, designated as mineral lot No. 40 for the “south end of said lode line.” They abandoned everything south of that, and they claimed that as

their south end line. That then must be their south end line, and by that line must their rights be measured, and our rights the same. They could not at that time abandon all south of that line, and then take it up or resume it at their pleasure. What they had abandoned they could not reclaim for the mere purpose of justifying trespass, and going in there and taking hundreds of thousands of dollars of valuable ore from the owners of the Providence. But yet, that which they abandoned then they assert now, that is not by their pleadings, not by any written paper do they claim it, but they claim it in the way of argument. It is like the gentleman who lays his coat down in court, as I did one day up here in Judge Seawell's court, you cannot always resume it again; because when I turned around to get it I found it was gone, and I have never seen it since. These gentlemen cannot lay down their rights one day and resume them another. Having abandoned them our right is fixed. But, says counsel, "we only abandoned it to the Government; we did not abandon it to the Providence." How could they abandon it to the Government when the Government had already conveyed this land to the Providence, and where, in that very notice of location, they say there is a conflict between the defendant and the Providence, and that they abandon it; in other words, yielding to the claim of the Providence owners. So this line was fully established as the line between the two parties, and the line which the vein crossed. It seems to me, there can be no question about that. If that is so, then that line must measure the rights of these

parties. I think we have followed it far enough to show that that line must determine what our rights are, and what the rights of the defendant may be. But what our rights are, it is said, is determined by the patent. True; and our rights are determined by this line, and the only question for the Court is, what is that line? Is it an end line? I have argued that already.

Now, is that the end line according to law? Is that the end line according to agreement, and the acts and conduct of the party respecting it for a long number of years—a sufficient number of years to entitle us to that property if we had no patent at all? If it stood simply as a location, and without the affirmance of our title by the Government; if it stood so long as the agreed line it ought to be taken now as settled. What is the consequence of that? If that is the end line for the Providence, then it is the line which is to be prolonged for the purpose of determining whether we own the ground in dispute or not. If that line is prolonged, then there is no longer any question. We own the ground; that is conceded; and that the defendants have entered and committed the trespass, as alleged, there is no further question at all. Is this the end line? If so, it is the end line to be prolonged for all. If it was agreed upon as the south end line of the claim—and it is in law, and according to agreement, the end line of the Providence—then we say it is the end line which should be prolonged, for two reasons. First, it is the line which the law would draw; second, it is the line which the parties have agreed upon, and forever have agreed upon it

from C to the end of the green line. Then it follows necessarily that it is the line to be prolonged, because otherwise it would not serve as an end line, as was said in the Richmond case, "the boundary line and end line as agreed upon between the parties should be drawn vertically downward. Being the agreed end line, it was by necessary implication an agreement also as to the prolongation of that line. Otherwise, it could not serve the purpose of an end line."

We think that that ends all controversy so far as that is concerned. The line crossing the vein makes it the end line in law; being the line agreed upon makes it the end line according to the agreement and according to law. That ends the proposition, except that it is claimed that the end line of the Providence is not parallel with the other, and that if we are permitted to follow the vein on these diverging lines, we will compass and take in somewhere about one-fourth of the mineralized globe. That is a calculation that I have never made, but I depend upon my learned brother upon the other side for the figures. If that be true, we are claiming too much. If we are claiming too much in length, does it render the claim void? I take it that it does not.

THE COURT—I suppose if you got that north end line where you claim it, you would be willing to run the other end line parallel with it?

MR. REDDY—I am willing to drop that. I would like to see my friend on the other side get rich, and I think it would be a good investment for him to take the other end of it. Certainly I don't think he can do well with this end.

If we take too much, I hope we will be allowed to give it up. Counsel surely could not insist that we have got to keep it. The result is summed up in the case—well, it is really summed up in the Tyler case and authorities cited there.

Here is what the learned Judge had to say on that, where there was too much claimed in length. He said: "We hardly think it needs discussion to decide " that the inclusion of a larger number of lineal feet " than two hundred renders a location, otherwise valid, " totally void. This may occur, and often must occur, " by accident of the surveyor, or other innocent mis- " take, where there exists no intention to claim more " than two hundred feet. Must the whole claim be " made void by this mistake, which may injure no " one, and was without design to violate the law?

" We can see no reason, in justice or in the nature " of transaction, why the excess may not be rejected, " and the claim be held good for the remainder, unless " it interferes with rights previously acquired."

If these parties acquired no extra lateral right, and according to their own showing they did not—we are certainly not interfering with their rights by claiming the line which was agreed upon and which, if they had anything to give, gave to us long ago by abandonment, because we were in possession, and it was to us that the abandonment was made.

It was said in Tyler Mining Co. vs. Sweeney: "A " locator of a mining claim may abandon a portion of " his original location without forfeiting any rights he " may have to the balance of the claim."

It has been held in a long line of decisions which I have not taken the pains to read, because your Honor will find them there, that in any case where an excess is claimed it is void only for the excess; and if our claim would take in one-fourth of the mineralized globe, we give up every inch of it freely and voluntarily and reduce it right down to what we are allowed by law.

Isn't that the way to treat the miner? The courts have always been trying to give him all that his location would allow, and particularly those courts which are most familiar with what the miner has to contend with, and who are willing to give those people that which they labor for, and that which Congress evidently intended they should have. So it is very easy to fix that matter. Just cut it off.

But there is something more in this. Here is a fixed end line. When we agreed upon that end line, that that was the end line, why we agreed, of course, by intendment, that they too should conform to it. We are willing to stick by our agreement.

But again: the vein has not been followed yet. We don't know where to draw the line. No illustrations are necessary to show what I intend, because this ground was gone over by your Honor in the Sweeney case to which I have already alluded, and the illustrations there seem to fit every question that arises here upon that point as to where to draw the line, and in view of that case, and knowing that the Court understands fully and needs no assistance from counsel, I would not be justified in taking up further time upon that line.

I don't think I am warranted in dealing with these questions any further. I read the authorities this morning, and there is no need of reading or citing them again, and I will hand them up.

If your Honor please, like my brother, Lindley, I don't want to talk after I am through. I think I have covered those points upon which the case ought in our judgment to turn. The detail matter would be simply painful to undertake to go into. Our brief, I think, upon all those points, is pretty full. I think of nothing else now that I can add, and thank your Honor for the attention I have had.

United States Circuit Court, Northern District of California.

A. WALRATH, ET AL.,

vs.

THE CHAMPION MINING COMPANY.

UNITED STATES OF AMERICA, }
Northern District of California. } ss.

I, Honorable THOMAS P. HAWLEY, U. S. District Judge, District of Nevada, assigned to hold and holding U. S. Circuit Court, for the Northern District of California, do hereby certify that the foregoing 164 type-written pages are a full, true and correct transcript of the testimony and all the proceedings in court, in the above-entitled cause, and that the same in pursuance of the stipulation of counsel and the order of the Court herein, constitute the record of said testimony and proceedings.

Witness my hand:

THOMAS P. HAWLEY,
Judge.

[Endorsed]: Filed June 12, 1894. W. J. Costigan,
Clerk. By W. B. Beaizley, Deputy Clerk.

Complainant's Exhibit No. 5.

General Land Office,
Number 213.

Mineral Certificate,
Number 7.

THE UNITED STATES OF AMERICA.

(VIGNETTE.)

To all to whom these presents shall come, Greeting:

Whereas, In pursuance of the Act of Congress, approved July 26, 1866, "Granting the right of way to ditch and canal owners over the public lands, and for other purposes," there have been deposited in the General Land Office of the United States the plat and field notes of survey of the claim of the *Providence Gold and Silver Mining Company* for thirty-one hundred (3100) feet of the Providence ledge, vein or lode accompanied by the certificate of the register of the Land Office at Sacramento, in the State of California, whereby it appears that in pursuance of said Act of Congress the said *Providence Gold and Silver Mining Company* did, on the sixth day of December, A. D. 1870, enter and pay for said claim, being Mineral Entry No. 7, in the series of said office, designated as *Lot No. 40 situate in the west half of Sections twelve (12) & thirteen (13) and east half of Section eleven (11) in Township sixteen (16) north, of Range eight (8) East, Mount Diablo Meridian* in the Nevada Mining District, in the County of Nevada and State of California, in the district of lands subject to sale at Sacramento, embracing

thirty-one hundred (3100) linear feet of the Providence ledge, vein or lode, bearing gold, with surface ground as hereinafter described and according to the returns on file in the General Land Office, bounded, described and platted as follows, with magnetic variation at eighteen (18) degrees east, to-wit:

Beginning at an oak tree thirty-six (36) inches in diameter, marked "*P. Co. No. 1,*" on its east side, which stands on the out croppings of the Providence quartz ledge or lode and on the west side of Dingley's orchard; thence north thirty (30) degrees west, descending, four (4) chains, to stake marked "*P. Co., No. 2,*" with mound of rocks; thence north fifty-eight (58) degrees east along face of hill, nine (9) chains and ten (10) links to fallen oak marked "*P. Co. No. 3,*" sixteen (16) chains to stake, marked "*P. Co. No. 7,*" with mound of rocks; thence north thirty-three (33) degrees, thirty (30) minutes west, descending one (1) chain and fifty (50) links to south bank of Deer creek, three (3) chains to middle of channel, three (3) chains and eighty (80) links to large rock on north side of said creek; thence south seventy-one (71) degrees west along north side of said creek four (4) chains and ninety (90) links to an oak tree six (6) inches in diameter, blazed and marked "*P. Co., No. 9*"; thence south twenty-six (26) degrees, thirty (30) minutes east, one (1) chain to middle of Deer creek, two (2) chains to top of large boulder on south bank of Deer creek, from which a maple four (4) inches in diameter bears south thirty (30) degrees east at the distance of ninety (90) links; thence south seventy-three (73) degrees west along south side of Deer creek eight (8) chains and forty (40) links to a point from which the mouth of the tun-

nel bears south ten (10) degrees east at the distance of twenty (20) links, nine (9) chains and eighty (80) links to top of boulder, eight (8) feet in diameter in bed of said creek; thence south forty-three (43) degrees west along bed of said creek one (1) chain and ninety (90) links to section line, between Sections eleven (11) and twelve (12) of Township sixteen north, of Range eight (8) east, five (5) chains and fifty (50) links, to a point from which the mill standing on the east side of the mouth of Peck's ravine bears south eight (8) degrees east, at the distance of fifty (50) links, ten (10) chains and seventy (70) links, to stake marked "*P. Co. No. 12,*" with mound of rocks at foot of a point of rocks; thence south thirty-eight (38) degrees, thirty (30) minutes east along face of hill nine (9) chains and eighty (80) links to stake marked "*P. Co. No. 13,*" with mound of rocks at the corner common to Sections eleven (11), twelve (12), thirteen (13) and fourteen (14), of Township sixteen (16) north, of Range eight (8) east, Mount Diablo Meridian, from which a spruce thirty-six (36) inches in diameter bears north thirty-four (34) degrees west at the distance of seventy (70) links; thence south thirty-three (33) degrees east along face of hill five (5) chains and ninety-five (95) links to a spruce forty (40) inches in diameter marked "*P. Co. No. 14,*" on its east side; thence south eighteen (18) degrees east, six (6) chains and ten (10) links to a spruce thirty (30) inches in diameter marked "*P. Co. No. 15*" on its east side; thence north eighty-five (85) degrees thirty (30) minutes east, seventy-five (75) links to middle of Peck's ravine one (1) chain and fifty-one (51) links to stake marked "*P. Co. No. 16*" with mound of rocks; thence south twenty-four (24) degrees

east along east side of Peck's ravine nine (9) chains and eighty-two (82) links to a stake marked "*P. Co. No. 17*" with mound of rocks beside a pine tree three (3) inches in diameter; thence north seventy-seven (77) degrees east one (1) chain and fifty-two (52) links crossing croppings of ledge four (four) chains and fifty-four (54) links to a stake marked "*P. Co. No. 18*" beside a pine tree four (4) inches in diameter; thence north fourteen (14) degrees west along western slope nineteen (19) chains and twenty (20) links to section line between Sections twelve (12) and thirteen (13) T. 16 N., R. 8 E. twenty-seven (27) chains to stake marked "*P. Co. No. 19*" with mound of rocks; thence south seventy-four (74) degrees, west forty-four (44) links to Rough and Ready ditch three (3) chains and three (3) links to the place of beginning; containing thirty-three (33) acres and ninety-two hundredths (92-100) of an acre of land, more or less, as represented on the following plat. It being the intent and meaning of these presents to convey unto the Providence Gold and Silver Mining Company, and to their successors and assigns, the said vein or lode in its entire width for the distance of thirty-one hundred (3100) linear feet along the course thereof, being twenty-four hundred and forty (2440) feet in a southerly direction and six hundred and sixty (660) feet in a northerly direction from said oak tree marked "*P. Co. No. 1*", hereinbefore described with its dips, angles and variations to any depth, although it may enter the land adjoining, together with the surface ground included in the above described boundaries.

(Map, page 253 of original transcript, omitted by consent of counsel).

Now, know ye, that the United States of America, in consideration of the premises and in conformity with said Act of Congress, have given and granted, by these presents do give and grant unto the said *Providence Gold and Silver Mining Company* and to their successors and assigns, the said mineral claim or premises hereinbefore described as Lot Number forty (40), situate in the west half of Sections twelve (12) and thirteen (13) and east half of Section eleven (11) of T. 16 N., R. 8 E., Mt. Do. Mer., with the right to follow said *Providence Ledge*, vein or lode to the distance of thirty-one hundred (3100) linear feet, with its dips, angles and variations to any depth, although it may enter the land adjoining. To have and to hold said premises, together with all the rights, privileges, immunities and appurtenances of whatsoever nature thereunto belonging unto the said *Providence Gold and Silver Mining Company*, and to their successors and assigns forever, subject, nevertheless, to the following conditions and stipulations:

First. That the grant made is restricted to one vein, ledge or lode with surface ground hereinbefore described, designated as Lot No. 40 situate in Sections eleven (11), twelve (12) and thirteen (13), Township sixteen (16) North, of Range eight (8) East, Mt. Do. Mer., to-wit, to the aforesaid *Providence Ledge*, vein or lode upon which the required amount has been expended in labor and improvements, and that any other vein or lode, should such exist within the above described premises, shall be and hereby is expressly excepted and excluded from these presents.

Second. That the premises hereby conveyed may be entered by the proprietor of any other vein or lode or quartz or other rock, in place bearing gold, silver, cinnabar, or copper, which has been or may be, patented to him by the United States, should the same be found to penetrate or intersect the mineral claim or premises hereinbefore described, for the purpose of extracting and removing the ore from such vein or lode, its dips, angles, and variations.

Third. That, in the absence of necessary legislation by Congress, the Legislature of the State of California may provide rules for working the mine hereby granted, involving easements, drainage, and other necessary means to its complete development.

IN TESTIMONY WHEREOF, I, ULYSSES S. GRANT, President of the United States of America, have caused these letters to be made patent, and the Seal of the General Land Office to be hereunto affixed.

Given under my hand at the City of Washington, the twenty-eighth day of April,
(Seal U. S. in the year of our Lord one thousand
General eight hundred and seventy-one, and of
Land Office.) the Independence of the United States
the ninety-fifth.

By the President,

U. S. GRANT.

By J. Parrish, Secretary.

Recorded Vol. 2, pages 542 to 548.

Examined.

J. N. GRANGER,

Recorder of the General Land Office.

[Endorsed]: Filed Aug. 29th, A. D. 1871, at 30 minutes past 5 o'clock P. M., and duly recorded at re-

quest of T. C. Dingley, in book No. 39, pages 448, 449, 450, 451, 452, deeds, records Nevada county. M. Cannon, Recorder. Pr. L. Garthe, Dep'y. \$8.00 paid. No. 11,639. Compl't Exhibit No. 5. May 28, '94. W. J. C., Cl'k.

Complainant's Exhibit No. 6.

NOTICE OF LOCATION.

Know All Men by These Presents, that I, John Frederick Schulthess, a citizen of the United States of America, residing in Nevada county, State of California, have this day, under the laws of Congress, passed May 10th, 1872, claimed and located the following described quartz claim or quartz lode (or series of lodes) henceforth to be known as the *Annex*, lying and being in Nevada Mineral District, Nevada Township and county, State aforesaid, and also in the NE. $\frac{1}{4}$ of the SE. $\frac{1}{4}$ of the SE. $\frac{1}{4}$ of Section 11, and in the NW. $\frac{1}{4}$ of the SW. $\frac{1}{4}$ of the SW. $\frac{1}{4}$ of Section 12, Township 16 north, Range 8 east, Mount Diablo Base and Meridian; said lode (or series of lodes) being supposed to be a southerly extension of the New Year's Lode (or series of lodes, and running in a more or less southerly direction into the patented Providence ground, a distance of one hundred and fifty (150) feet, more or less. With all dips, spurs, angles and variations of the same.

And also all that necessary surface ground for the convenient working of said lode (or series of lodes), and bounded and described as follows, to-wit:

Commencing at a point near the middle of the bed of Deer creek, distance N. 26 degrees and 20 minutes W. one hundred and fifty (150 feet, more or less, from a post marked U. M. Co. No. 3) which is standing on the northwest boundary line of the patented Providence ground between the Providence posts No. 11 and 12, and distant S. 26 degrees 20 minutes E. one hundred and fifty (150) feet, more or less, from the New Year's post No. 3 (which is standing adjoining the Ural post No. 2) marked U. M. Co. No. 2, thence running N. 45 deg. E. along the southerly line of the New Year's Extension four (4) chains; thence running N. 70 deg. E., along the southerly line of the New Year's Extension, five chains and fifty links ($5 \frac{1}{2}$ ch.) to a point on the westerly line of the Soggs or Merrifield mine, near the middle of Deer creek; thence S. 15 deg. E. seventy-five (75) links, more or less, across the southerly part of Deer creek, to a point on the northerly line of the Providence patented ground; thence running S. 75 deg. W. along the northerly line of the Providence patented ground, one (1) chain, more or less, to Providence post No. 11; thence running S. 43 deg. 10 min. W. along the northwest boundary line of the Providence patented ground eight chains, sixty-five links (8 ch. 65 links) to post No. 3 of the Ural survey (marked U. M. Co. No. 3), and thence running N. 26 deg. 20 min. one hundred and fifty (150) feet, more or less, to the point of beginning in the bed of Deer creek, being a vacant tract of land of irregular shape, mostly river bed, and bounded on the north by the New Year's Extension, on the east by the Soggs or Merrifield mine, on the south by

the Providence mine, and on the west by the Ural mine (belonging to the Wyoming Con. Co., as per diagram on record). Two copies of this notice of location have been put upon the above described claim.

IN WITNESS WHEREOF, I have hereunto set my hand and seal in Nevada county, State of California, this seventh day of July, A. D., eighteen hundred and seventy-nine (1879).

JOHN FREDERICK SCHULTHESS. (Seal).

Witness to the location,

F. L. HARRYHOUSEN,

GEORGE STEGER.

(Reproduction of diagram omitted by consent of counsel).

Recorded at the request of J. F. Schulthess, July 7, 1879, at 20 min. past 3 o'clock P. M.

JOHN A. RAPP, Recorder.

STATE OF CALIFORNIA,)
County of Nevada. } ss.

I, John Werry, County Recorder, in and for the County of Nevada, State of California, do hereby certify that I have compared the foregoing mining notice and find the same to be a full, true and correct copy thereof, as on record in Book 7, of Mining Claims, pages 703-4, in this my office.

Witness my hand and official seal, this 5th day of January, A. D. 1894.

(Seal.)

JOHN WERRY,

County Recorder, Nevada county, Cal.

[Endorsed]: Compls. Exhibit No. 6, May 28, '94.
W. J. C., Clk.

Complainant's Exhibit No. 7.

NOTICE OF LOCATION.

Know All Men by These Presents, that I, John Frederick Schulthess, a citizen of the United States of America, residing in Grass Valley Township, Nevada County, State of California, have this day claimed and located that certain virgin, blind and vacant Quartz lode or vein, hereafter to be known as the *Twin Mine*, situate in the Nevada Mining District, Nevada Township and County, State of California, the same being supposed to be a northerly extension of one of the Providence Quartz lodes or veins, and bounded and described as follows, to-wit:

Commencing at a stake (marked T.M.Co.No. 1) standing in the S. W. $\frac{1}{4}$ of the S. W. $\frac{1}{4}$ of the N. W. $\frac{1}{4}$ of Section 12, Township 16 North, Range 8 East, Mount Diablo Base and Meridian, thence running in a direction more or less N. N. W. fifteen hundred (1500) feet to a stake (marked T. M. Co. No. 2) standing on or near the east and west center line, running through the S. E. $\frac{1}{4}$ of the N. E. $\frac{1}{4}$ of the N. E. $\frac{1}{4}$ of Section 11, Township and Range aforesaid, the same Quartz lode or vein lying between the Nevada lode and the New Year's lode, and dipping eastwardly, with all dips, spurs, angles and variations of the same.

Said Quartz lode to be worked principally through the New Year's tunnel, owned by the Champion Mining Company.

The surface ground herewith claimed and located for the convenient working of both lodes or veins, the Twin and the New Year's being bounded and described as follows, to-wit:

Commencing at the southwest corner of the Nevada (or Soggs) mine, on the northerly bank of Deer creek, in the NW. $\frac{1}{4}$ of the NW. $\frac{1}{4}$ of the SW. $\frac{1}{4}$ of Section 12, Township 16 North, Range 8 East, Mount Diablo Base and Meridian; thence running N. 15 degrees W. along the westerly line of the Nevada mine, thirty-four chains and twenty links, thence running S. $28\frac{1}{4}$ degrees W. four chains and fifty links, along the patented Champion ground, thence running S. $2\frac{1}{2}$ degrees east along the patented Champion ground six chains and seventy six links; thence running S. 6 degrees 20 minutes E. along the easterly line of the Ural mine, owned by the Wyoming Con. Company, twenty-six chains and fifty-three links to the northerly bank of Deer creek, and thence running along the northerly bank of Deer creek, nine chains, more or less, to the point of beginning or commencement.

The dumpage ground claimed and located, extending along the whole southerly front of the surface ground and running into Deer creek, to its center, being nine chains, more or less, in length, by one hundred feet, more or less, in width.

Two copies of this notice of location, and of the annexed having been posted on said tract or surface ground, near the stakes No. 1 and No. 2, respectively.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, in Grass Valley township, Nevada county, State of California, this twenty-fifth day of March, eighteen hundred and seventy-eight (1878).

JOHN FREDERICK SCHULTHESS. (Seal.)

Witness to location:

LEOP GARTHE,

F. L. HARRYHOUSEN.

(Diagram, page 262, original transcript, omitted by consent of counsel).

Recorded at request of John F. Schulthess, March 25, 1878, at 30 min. past 3 o'clock P. M.

JOHN A. RAPP,
Recorder.

STATE OF CALIFORNIA, }
County of Nevada. } ss.

I, John Werry, County Recorder, in and for the County of Nevada, State of California, do hereby certify that I have compared the foregoing mining notice, and find the same to be a full, true and correct copy thereof, as on record in Book 7 of Mining Claims, pages 342-3 in this, my office.

Witness my hand and official seal this 5th day of January, A. D. 1894.

(Seal.)

JNO. WERRY,
County Recorder, Nevada County, Cal.

[Endorsed]: No. 11,639. Compls. Exhibit No. 7.
May 28, '94. W. J. C., Clk.

*In the Circuit Court of the United States, Ninth Circuit,
Northern District of California.*

AUSTIN WALRATH.

Plaintiff, }

vs.

CHAMPION MINING COMPANY,

Defendant. }

Respondent's Exhibit A. Stipulation as to Evidence.

It is stipulated and agreed by the parties of this action as follows:

That for all the purposes of this action and the trial thereof, the following facts are admitted, and shall be deemed and taken as proved at the trial with the same effect as if evidence thereof were duly offered and admitted in open court, to-wit:

That the mining claims described in the answer of defendant to the Amended Bill of Complaint of plaintiff as the "New Year's" and "New Years Extension" and to which title is asserted by defendant, are situated within the United States Land District known as the Sacramento Land District.

That on October 4th, 1890, J. F. Linthicum was the duly appointed and acting Receiver of said Land Office.

That on October 4th, 1890, the defendant, Champion Mining Company, duly entered at said Land Office among others said "New Year's" mining claim and said "New Year's Extension" mining claim designated respectively in the office of the U. S. Surveyor-General for California as Lots 182 and 183 of Township 16 north, Range 8 east, Mt. Diablo Base and Meridian, and paid the Government the purchase price therefor.

That thereupon and on said October 4, 1890, the said J. F. Linthicum, as Receiver of the U. S. Land Office aforesaid, made, issued and delivered to said Champion Mining Company his receipt, which is in the words and figures following, to-wit:

RECEIVER'S RECEIPT.

(Duplicate to be given to purchaser.)

Mineral Entry No. 1426 A.

UNITED STATES LAND OFFICE,
at Sacramento, Cal.,

Lot A. & B.

October 4, 1890.

Received from the Champion Mining Company, a corporation, the sum of one hundred and ninety dollars, the same being payment in full for the area embraced in that mining claim known as the Champion Consolidated Quartz Mines and Mill-site, embracing mineral lots Nos. 182, 183, 184, 185, 186 and 187; also Lot C, or Mill-site Lot No. 188, Section 11 & 12, in Township No. 16 N., of Range No. 8 east, M. D. M. Meridian, designated as Lots Nos. A & B; said lode claim, as entered, embracing 36 90-100 acres, and said mill-site claim, 44-100 acres, in Nevada City Mining District, in the County of Nevada and State of California, as shown by the survey thereof.

\$190.

J. F. LINTHICUM,

Receiver.

This stipulation is to be filed in said cause and be deemed a record therein.

Dated May 16th, 1894.

SMITH & MURASKY,

Attorneys for Plaintiff.

LINDLEY & EICKHOFF,

Attorneys for Defendant.

[Endorsed]: Respdts. Exhibit "A." W. J. C., Clk.
Filed May 16, 1894. W. J. Costigan, Clerk. By W.
B. Beaizley, Deputy Clerk.

*In the Circuit Court of the United States, in and for the
Ninth Circuit, Northern District of California.*

AUSTIN WALRATH,

Complainant,

vs.

CHAMPION MINING COMPANY,

Respondent.

Petition for an Order Allowing Appeal.

Whereas, Austin Walrath, the complainant in the above-entitled cause, feeling himself aggrieved by the final decree heretofore made and entered in the above-entitled cause, on the 4th day of May, 1895, wherein and whereby it was ordered and adjudged that the complainant, subject to certain limitations therein set out, was the owner of a certain mining ground in said decree described, and that said complainant had the right to follow the "Back or Ural" ledge only between certain planes and within certain lines in said decree described, and that said complainant was not entitled to pursue said ledge and to follow the same within the end planes described in his bill of complaint herein, and that complainant be enjoined from pursuing said ledge beyond the planes described in said decree as limiting his right to pursue said "Back or Ural" ledge, and allowing respondent, Champion Mining Company, to pursue said "Back or Ural" ledge within the surface lines that bound the surface ground of the complainant cut down vertically to the center of the earth and within the end planes set out by complainant in his bill of complaint as the true end planes that bound his

right to the sole and exclusive enjoyment of said "Back or Ural" ledge.

Comes now the complainant, by Messrs. Smith & Murasky, his solicitors, and Messrs. Reddy, Campbell & Metson, of counsel, and hereby appeals to the United States Circuit Court of Appeals, in and for the Ninth Judicial Circuit, from said decree and from the whole thereof, and petitions said Circuit Court of the United States, in and for the Ninth Judicial Circuit, Northern District of California, for an order allowing and permitting said complainant to prosecute an appeal from said decree and the whole thereof, to the Honorable United States Circuit Court of Appeals, in and for the Ninth Judicial Circuit, under and according to the laws of the United States, for that purpose made and provided; and complainant further petitions the said Circuit Court of the United States, in and for the Ninth Circuit, to make an order fixing the amount of security and the penal sum of the bond and undertaking which complainant shall be required to give and furnish upon his appeal, and that upon giving such security, bond and undertaking, all further proceedings in and for the United States Circuit Court, in and for the Ninth Circuit, Northern District of California, be suspended and stayed until the determination of complainant's appeal by the said United States Circuit Court of Appeals, and your petitioner will ever pray, etc.

Dated June 29th, 1895.

SMITH & MURASKY,

Solicitors for Complainant.

REDDY, CAMPBELL & METSON,

Of Counsel.

[Endorsed]: Filed June 29th, 1895. W. J. Costigan,
Clerk.

*In the Circuit Court of the United States, in and for the
Ninth Circuit, Northern District of California.*

AUSTIN WALRATH,

Complainant,

vs.

CHAMPION MINING COMPANY,

Respondent.

Assignments of Error.

Austin Walrath, the complainant and appellant in the above-entitled cause, by his counsel and solicitors, Messrs. Reddy, Campbell & Metson, and Messrs. Smith & Murasky, makes this, his assignments of error, and particularly specifies therein the following as the errors which manifestly appear from the record herein, and upon which he will rely and which he will urge on his appeal, and such other appellate proceedings as may be taken in this case.

I.

The Circuit Court of the United States, in and for the Ninth Circuit, Northern District of California, erred in holding that the surface line of the Providence mining claim described in complainant's bill of complaint, as running S. 43 degrees W., was not the northerly end line of the ledge described in complainant's bill of complaint and in respondent's answer thereto, as the "Back or Ural or Contact" ledge.

II.

The Circuit Court of the United States, in and for the Ninth Circuit, Northern District of California, erred in holding that the complainant is the owner only of so much of the "Ural or Contact" ledge within the surface ground of the Providence mining claim as lies S.E. of bounding plane drawn down vertically through the surface line of the Providence mine designated in the description thereof in complainant's bill of complaint and in the decree herein, as running from the top of a boulder 8 feet in diameter in the bed of Deer creek, S. 43 degrees W. along the bed of said creek 10 chains and 70 links to a stake marked "P. Co. No. 12" and so much of said "Ural or Contact" ledge within the ground of said Providence mine as lies S. of a plane drawn vertically downward through the surface line of said Providence mining ground, designated in complainant's bill of complaint and in the final decree herein, as running from the top of a large boulder on the S. bank of Deer creek S. 73 degrees W. along the S. side of Deer creek 9 chs. and 80 links to the top of a boulder 8 feet in diameter in the bed of said creek and through the last described line produced N. 73 degrees E. indefinitely.

III.

The Circuit Court of the United States, in and for the Ninth Circuit, Northern District of California, erred in holding that the respondent was the owner of all such portions of the "Ural or Contact" ledge as lies northwesterly of said line herein described as running S. 43° W. from the top of a boulder 8 feet in

diameter, in the bed of Deer creek 10chs. and 70 links to a stake marked "P. Co. No. 12," and N. of the plane drawn through the line and described herein as running S. 73° W. along the S. side of Deer creek, from the top of a large boulder on the south bank of said creek 9 chains and 80 links, to the top of a boulder 8 feet in the bed of said creek.

IV.

The Circuit Court of the United States, in and for the Ninth Circuit, Northern District of California, erred in not holding that the complainant and his co-owners were the owners, and entitled to every part of said "Contact or Ural" ledge as lies southeasterly of said line described as running S. 43° W., and SE. of a bounding plane drawn through said line prolonged indefinitely in its own direction 43° E.

V.

The Circuit Court of the United States, in and for the Ninth Circuit, Northern District of California, erred in fixing and determining any of complainant's rights to said "Ural of Contact" ledge by a bounding plane drawn through the line described herein as running S. 73° W.

VI.

The Circuit Court of the United States, in and for the Ninth Circuit, Northern District of California, erred in not fixing said line running S. 43° W., as the only end line by which the right of the complainant should be determined in his pursuit of said "Contact or Ural" ledge beyond his surface ground.

VII.

The Circuit Court of the United States, in and for the Ninth Circuit, Northern District of California, erred in not enjoining the respondent from pursuing said "Contact or Ural" ledge S. E. of said line, running S. forty-three degrees W. and S. E. of a bounding plane drawn through said line prolonged indefinitely in its own direction 43 degrees E.

VIII.

The Circuit Court of the United States, in and for the Ninth Circuit, Northern District of California, erred in allowing and permitting respondent to enter within the surface lines of the Providence mining ground, cut down vertically to the center of the earth, and to take therefrom any part or portion of said "Back or Contact" ledge or any ledge.

IX.

The Circuit Court of the United States, in and for the Ninth Circuit, Northern District of California, erred in not holding that the complainant and his co-owners were entitled to the absolute use and enjoyment of every ledge within the surface lines of said Providence mining claim cut down vertically to the center of the earth.

WHEREFORE, in order that the foregoing assignments of error appear of record, the complainant and appellant presents the same to the Court and prays that such distribution therefor may be made as is in accordance with the laws and the statutes of the United States, and upon such assignments of error, this ap-

pellant prays that the final decree herein be reversed, annulled and declared of no avail, and that he, said appellant, be restored to all things of which he has been deprived.

SMITH & MURASKY,
Solicitors for Complainant.

[Endorsed]: Filed June 29th, 1895. W. J. Costigan, Clerk.

In the Circuit Court of the United States, in and for the Ninth Circuit, Northern District of California.

At a stated term, to-wit, February Term, A. D. 1895, of the Circuit Court of the United States, Ninth Circuit, Northern District of California, held at the courtroom of said court, in the City and County of San Francisco, on the 29th day of June, 1875. Presiding, the Honorable T. P. HAWLEY, Judge.

AUSTIN WALRATH,

Plaintiff,

vs.

CHAMPION MINING COMPANY,

Defendant.

Order Allowing an Appeal.

On motion of Messrs. Smith & Murasky, solicitors for complainant and appellant, it is hereby ordered that an appeal to the United States Circuit Court of Appeals for the Ninth Judicial Circuit, from the decree heretofore filed and entered herein, to-wit, on the 4th day of May, 1895, and from the whole thereof, be, and the same is hereby allowed; that a transcript of the plead-

ings, testimony, record, exhibits, assignments of error, and of all proceedings in the case be forthwith transmitted to the said United States Circuit Court of Appeals in and for the Ninth Judicial Circuit, upon complainant giving a bond and undertaking in the sum of \$500.00.

Dated June 29th, 1895.

THOMAS P. HAWLEY,

Judge.

[Endorsed]: Filed June 29th, 1895. W. J. Costigan, Clerk.

Bond on Appeal.

Know All Men by These Presents, that we, Austin Walrath as principal, and W. H. Widman and Herman Schlageter, as sureties, are held and firmly bound unto The Champion Mining Company (a corporation), appellee, in the full and just sum of five hundred (\$500) dollars, to be paid the said Champion Mining Company, appellee, its successors and legal representatives or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this 29th day of June, in the year of our Lord one thousand eight hundred and ninety-five.

Whereas, lately at a Circuit Court of the United States for the Northern District of California, in a suit depending in said court, between the said Austin Walrath, complainant, and The Champion Mining Company, respondent, a decree was rendered against

the said Austin Walrath, and the said Austin Walrath having obtained from said court an order allowing an appeal to reverse the decree in the aforesaid suit, and a citation directed to the said Champion Mining Company, citing and admonishing it to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at San Francisco, in the State of California, on the 20th day of July next.

Now, the condition of the above obligation is such, that if the said Austin Walrath, appellant shall prosecute his said appeal to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

AUSTIN WALRATH, (Seal)

W. H. WIDMAN, (Seal)

HERMAN SCHLAGETER. (Seal)

Acknowledged before me the day and year first above written.

W. J. COSTIGAN,

Commissioner, U. S. Circuit Court, Northern
District of California.

UNITED STATES OF AMERICA, }
Northern District of California. } ss.

W. H. Widman and Herman Schlageter, being duly sworn, each for himself, deposes and says, that he is a householder in said district, and is worth the sum of five hundred dollars, exclusive of property exempt from execution, and over and above all debts and liabilities.

W. H. WIDMAN.

HERMAN SCHLAGETER.

Subscribed and sworn to before me, this 29th day of June, A. D. 1895.

W. J. COSTIGAN,
Commissioner of U. S. Circuit Court, Northern
District of California.

[Endorsed]: Form of bond and sufficiency of sureties approved. Thomas P. Hawley, Judge. Filed June 29th, 1895. W. J. Costigan, Clerk.

UNITED STATES OF AMERICA.

*Circuit Court of the United States, Ninth Judicial Circuit,
Northern District of California.*

AUSTIN WALRATH,

vs.

THE CHAMPION MINING COMPANY,
ET AL.

} No. 11,639.

Order Allowing Withdrawal of Exhibits.

Upon motion of J. F. Smith, Esq., Counsel for Complainant, it is ordered that the following original exhibits, viz: Complainant's Exhibits 1, 2, 3, 4, 9 and 10, (maps), Exhibit 8, (photograph), Exhibit 11, (model), also Respondent's Exhibits "B" and "C", (being maps), be allowed to be withdrawn from the files of this cause for the purpose of being transmitted to the United States Circuit Court of Appeals for the Ninth Circuit, as a part of the record on appeal to said United States Circuit Court of Appeals in this cause.

The said original exhibits to be delivered to the solicitors for complainant herein, and be returned to the files of this cause in this court upon the final determination of the appeal herein by said United States Circuit Court of Appeals.

(Signed)

McKENNA,
Circuit Judge.

[Endorsed]: Filed July 19, 1895. W. J. Costigan,
Clerk. By W. B. Beazley, Deputy Clerk.

*In the Circuit Court of the United States, of the Ninth
Judicial Circuit, Northern District of California.*

AUSTIN WALRATH,

Complainant,

vs.

THE CHAMPION MINING COMPANY,

Respondent.

No. 11,639.

Certificate to Transcript.

I, W. J. Costigan, Clerk of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Northern District of California, do hereby certify that the foregoing pages, numbered from 1 to 276 inclusive, to be a full, true and correct copy of the record and proceedings in the above and therein entitled cause (excepting therefrom the Complainant's original Exhibits 1, 2, 3, 4, 9 and 10 (maps), Exhibits 8 (photograph) and 11 (model), also Respondent's Exhibits "B" and "C" (being maps), which said original exhibits, by order of Court, accompany and form a part of this record, and that the

same together constitute the transcript of the record herein, upon appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that the cost of the foregoing transcript of record is \$163.80, and that said amount was paid by Austin Walrath, the complainant herein.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Circuit Court, this 20th day of
(Seal.) July, in the year of our Lord one thousand eight hundred and ninety-five, and of our Independence, the 120th.

W. J. COSTIGAN,
Clerk U. S. Circuit Court, Northern District of California.

Citation.

UNITED STATES OF AMERICA—ss.

The President of the United States, to The Champion Mining Company (a Corporation), Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals, for the Ninth Circuit, to be holden at the City of San Francisco, in the State of California, on the 20th day of July next, pursuant to an order allowing an appeal entered in the Clerk's Office of the Circuit Court of the United States, for the Northern District of California, from the decree heretofore filed and entered on the 4th day of May, 1895, in that certain suit and action wherein Austin Walrath is complainant and appellant, and you are respondent and appellee, to

show cause, if any there be, why the said decree rendered against the said complainant and appellant, as in the said order allowing an appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable THOMAS P. HAWLEY, Judge of the United States Circuit Court, for the Ninth Judicial Circuit, this 29th day of June, A. D. 1895.

THOMAS P. HAWLEY,
U. S. Judge.

Service of the within citation and the receipt of a copy thereof hereby admitted this 2d day of July, 1895.

LINDLEY & EICKHOFF,
Attorneys for Respondent Champion Mining
Company.

[Endorsed]: No. 11,639. U. S. Circuit Court of Appeals, for the Ninth Circuit. Austin Walrath vs. The Champion Mining Company. Citation. Filed July 12th, 1895. W. J. Costigan, Clerk U. S. Circuit Court, Northern District of California. By W. B. Beazley, Deputy Clerk.

[Endorsed]: No. 243. United States Circuit Court of Appeals for the Ninth Circuit. Austin Walrath, Appellant, vs. The Champion Mining Co., Appellee. Transcript on Appeal. From United States Circuit Court, Northern District of California. Filed July 20, 1895.

F. D. MONCKTON,
Clerk.

277 In the United States Circuit Court of Appeals for the Ninth Circuit.

AUSTIN WALRATH, Appellant,
 vs.
 THE CHAMPION MINING COMPANY, Appellee. } No. 243.

Appeal from the United States circuit court, northern district of California.

Before Gilbert and Ross, circuit judges, and Morrow, district judge.

Ross, circuit judge, delivered the opinion of the court :

In so far as the decree appealed from limits the extralateral right of the complainant to follow the vein, called in the record the back or contact vein, in its downward course, by the line *f g*, running south 43 west, extended vertically downward, it is erroneous and should be modified. The court below correctly found and adjudged the end lines of the Providence claim, under which the complainant claims, to be the lines *a p* and *g h*, and, further, that they are the true and only end lines of each and every vein, lode, or ledge found within the surface location of the Providence claim. It is conceded that whatever right the complainant has in or to the ledge in controversy is derived from the act of Congress of May 10, 1872, embodied in the Revised Statutes as section 2322. Unless that ledge has its top or apex within the lines of the surface location of the Providence claim, the complain-

278 ant has no extralateral right in respect to that ledge at all; but that it does have its top or apex within those surface lines is an uncontroverted fact, and was so found and adjudged by the court below. The complainant therefore has the exact extralateral right in respect thereto that is defined by the statute already cited, which is the right to follow the dip of the ledge in its downward course outside of the vertical side lines of the surface location of the Providence claim, wherever it goes, until it comes to vertical planes drawn downward through the end lines of the location, continued indefinitely in their own direction. Beyond these points of intersection the extralateral right does not go, but where the right exists at all it is confined only by the vertical planes drawn downward through the end lines of the location extended in their own direction and is subject to the condition declared in the statute, that the possession of such extralateral right does not confer upon the possessor the right to enter upon the surface of a claim owned or possessed by another. In no case is the extralateral right of a first locator in respect to a vein, lode, or ledge having its top or apex within the lines of his surface location bounded by any side line of the surface location extended downward or otherwise. To the extent, therefore, that the extralateral right of the complainant to the

back or contact ledge here in controversy was bounded by the court below by the said line *f g*, running south 43 west, extended vertically downward, it is erroneous. It should be bounded by vertical planes drawn downward through the end line *g h*, running south 73 west, and through the end line *a p* extended indefinitely in their own direction, subject to the condition that the complainant have

no right to enter upon the surface of the respondent's claims.

279 There is no other error prejudicial to the appellant.

Cause remanded, with directions to the court below to modify the decree in accordance with this opinion, and as so modified it is affirmed.

(Endorsed :) Opinion. Filed Feb. 3, 1896. F. D. Monckton, clerk.

280 United States Circuit Court of Appeals for the Ninth Circuit.

AUSTIN WALRATH, Appellant,	} No. 243.
vs.	
THE CHAMPION MINING COMPANY.	

Appeal from the circuit court of the United States for the northern district of California.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the northern district of California and was argued by counsel.

On consideration whereof it is now here ordered, adjudged, and decreed by this court that the decree of the said circuit court in this cause be, and the same is hereby, modified in accordance with the opinion of this court, and as so modified it is affirmed, each party paying own costs.

(Endorsed :) Decree. Filed Feb. 3, 1896. F. D. Monckton, clerk.

281 In the United States Circuit Court of Appeals in and for the Ninth Circuit.

AUSTIN WALRATH, Appellant,	}
vs.	
CHAMPION MINING COMPANY, Appellee.	

Whereas Austin Walrath, the appellant in the above-entitled cause, feeling himself aggrieved by the decree and decision of said circuit court of appeals, heretofore made and entered in the above-entitled cause on the 3d day of February, 1896, wherein and whereby it was ordered and adjudged that said appellant had the right to follow the "back or Ural" ledge on its depth only between certain

planes and within certain lines in said decree described, and that said appellant was not entitled to pursue said ledge and to follow the same within the end planes described in his bill of complaint herein, and that appellee, Champion Mining Company, had the right to pursue said "back or Ural" ledge within the surface lines that bound the surface ground of the appellant, cut down vertically to the center of the earth, and within the end planes set out by the appellant in his bill of complaint as the true end planes that bound his right to the sole and exclusive enjoyment of said "Back or Ural" ledge:

Comes now the appellant, by Messrs. Smith & Murasky, his solicitors, and Messrs. Reddy, Campbell & Metson, of counsel, and hereby appeals to the Supreme Court of the United States from said decree, judgment, and decision, and from the whole thereof, and petitions said United States circuit court of appeals in and for the ninth circuit for an order allowing and permitting said appellant to
 282 prosecute an appeal from said decree, judgment, and decision, and the whole thereof, to the honorable Supreme Court of the United States under and in accordance with the laws of the United States for that purpose made and provided; and appellant further petitions the said United States circuit court of appeals in and for the ninth circuit to make an order fixing the amount of security and the penal sum of the bond and undertaking which the appellant shall be required to give and furnish upon his appeal, and that upon giving such security, bond, and undertaking all further proceedings herein be suspended and stayed until the determination of appellant's appeal by the said United States Supreme Court; and your petitioner will ever pray, etc.

Dated May 18th, 1896.

SMITH & MURASKY,
Solicitors for Appellant.

P. REDDY,
Of Counsel.

(Endorsed:) Petition for order allowing appeal. Filed May 18, 1896. F. D. Monckton, clerk.

283 In the United States Circuit Court of Appeals in and for the Ninth Circuit.

AUSTIN WALRATH, Appellant,	}
<i>vs.</i>	
CHAMPION MINING COMPANY, Appellee.	}

Assignments of Error.

Austin Walrath, the complainant and appellant in the above-entitled cause, by his counsel and solicitors, Messrs. Reddy, Camp-

bell & Metson and Messrs. Smith & Murasky, makes this his assignment of error, and particularly specifies therein the following as the errors which manifestly appear from the record herein and upon which he will rely and which he will urge on his appeal and such other appellate proceedings as may be taken in this case:

I.

The United States circuit court of appeals in and for the ninth circuit erred in holding that the surface line of the Providence mining claim, described in appellant's bill of complaint as running S. 43 degrees W., was not the northerly end line of the ledge designated in said bill of complaint and in appellee's answer thereto as the "back or Ural or contact" ledge.

II.

The United States circuit court of appeals in and for the ninth circuit erred in holding that the appellant is the owner only of so much of the "Ural or contact" ledge within the surface ground of the Providence mining claim as lies S. of a plane drawn 284 vertically downward through that surface line of said Providence mining ground continued indefinitely in its own direction, which is designated in said decree by the letters *g h* and described in said bill of complaint as running from the top of a large boulder on the S. bank of Deer creek S. 73 degrees W. along the S. side of Deer creek 9 chs. and 80 links to the top of a boulder 8 feet in diameter in the bed of the said creek.

III.

The United States circuit court of appeals in and for the ninth circuit erred in holding that the appellee was the owner of all such portions of the "Ural or contact" ledge as lie N. of the plane drawn through the line continued indefinitely in its own direction which is designated in said decree by the letters *g h* and described in said bill of complaint as running S. 73 degrees W. along the S. side of Deer creek from the top of a large boulder on the south bank of said creek 9 chains and 80 links to the top of a boulder 8 feet in diameter in the bed of said creek.

IV.

The said United States circuit court of appeals erred in deciding and holding that the appellant and his co-owners were only entitled to such portions of the "back or contact" ledge as lie between vertical planes drawn downward through the lines described in its decision and decree as *g h* and *a p*, continued indefinitely in their own direction.

V.

The United States circuit court of appeals in and for the ninth circuit erred in not holding that the complainant and his co-owners were the owners and entitled to all such parts of said "contact or Ural" ledge as lie southeasterly of the line described in said bill of complaint as running S. 43 degrees W. and S. E. of a bounding plane drawn through said line prolonged indefinitely in its own direction.

VI.

The United States circuit court of appeals in and for the ninth circuit erred in fixing and determining any of appellant's rights to said "Ural or contact" ledge by a bounding plane drawn through the said line described as running S. 73 degrees W.

VII.

The United States circuit court of appeals in and for the ninth circuit erred in not fixing said line running S. 43 degrees W. as the only end line by which the right of the appellant should be determined in his pursuit of said "contact or Ural" ledge beyond his surface ground.

VIII.

The United States circuit court of appeals in and for the ninth circuit erred in not enjoining the appellee from pursuing said "contact or Ural" ledge S. E. of said line running S. 43 degrees W. and S. E. of a bounding plane drawn through said line prolonged indefinitely in its own direction.

IX.

The United States circuit court of appeals in and for the ninth circuit erred in allowing and permitting appellee to enter within the surface lines of the Providence mining ground, cut down vertically to the center of the earth, and to take therefrom any part or portion of the said "back or contact" ledge or any ledge.

X.

The United States circuit court of appeals in and for the ninth circuit erred in not holding that the appellant and his co-owners were entitled to the absolute use and enjoyment of every ledge within the surface lines of said Providence mining claim cut down vertically to the centre of the earth.

286 Wherefore, in order that the foregoing assignments of error appear of record, the complainant and appellant presents the same to the court and prays that such disposition thereof may be made as is in accordance with the laws and statutes of the United

States, and upon such assignments of error this appellant prays that the decree, judgment, and decision of the said United States circuit court of appeals herein be reversed, annulled, and declared of no avail, and that he, said appellant, be restored to all things of which he has been deprived.

Dated May 18th, 1896.

SMITH & MURASKY,
Solicitors of Appellant.

(Endorsed :) Assignments of error. Filed May 18, 1896. F. D. Monckton, clerk.

287 In the United States Circuit Court of Appeals in and — the Ninth Circuit.

At a stated term, to wit, October term, A. D. 1895, of the United States circuit court of appeals, ninth circuit, held at the court-room of said court, in the city and county of San Francisco, on the 18th day of May, 1896.

AUSTIN WALRATH, Appellant,
vs.
CHAMPION MINING COMPANY, Appellee. }

Order Allowing Appeal.

On motion of Messrs. Smith & Murasky, solicitors for complainant and appellant, it is hereby ordered that an appeal to the Supreme Court of the United States from the decree, judgment, and decision heretofore filed and entered herein, to wit, on the 3d day of February, 1896, and from the whole thereof, be, and the same is hereby, allowed; that a transcript of the pleadings, testimony, record, exhibits, assignments of error, and all proceedings in the case be forthwith transmitted to the said Supreme Court of the United States upon appellant giving a bond and undertaking in the sum of \$500.00.

Dated May 18th, 1896.

JOSEPH McKENNA,
Circuit Judge.

(Endorsed :) Order allowing appeal to Supreme Court U. S. and fixing bond. Filed May 18, 1896. F. D. Monckton, clerk.

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Bond on Appeal.

Know all men by these presents that we, Austin Walrath, as principal, and Charles Stepp and Peter Tautphaus, as sureties, are held and firmly bound unto The Champion Mining Company (a

corporation), appellee, in the full and just sum of five hundred (\$500.00) dollars, to be paid the said Champion Mining Company, appellee, its successors and legal representatives or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 18th day of May, in the year of our Lord one thousand eight hundred and ninety-six.

Whereas lately, in the United States circuit court of appeals in and for the ninth circuit, northern district of California, in the matter of an appeal depending in said court between the said Austin Walrath, appellant, and The Champion Mining Company, respondent, a decree, decision, and judgment was rendered against the said Austin Walrath, and the said Austin Walrath having obtained from the said court an order allowing an appeal to reverse the decision, judgment, and decree made, rendered, and entered on said appeal, and a citation directed to the said Champion Mining Company, citing and admonishing it to be and appear at the honorable Supreme Court of the United States, to be holden at Washington, in the District of Columbia, within sixty days from date:

Now, the condition of the above obligation is such that if the said Austin Walrath, appellant, shall prosecute his said appeal to effect and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

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AUSTIN WALRATH.
CHARLES STEPP. [SEAL.]
PETER TAUTPHAUS. [SEAL.]

Acknowledged before me the 18th day of May, A. D. 1896.

[SEAL.]

F. D. MONCKTON,

Clerk U. S. Circuit Court of Appeals for the Ninth Circuit.

UNITED STATES OF AMERICA, }
Northern District of California, } ss:

Charles Stepp and Peter Tautphaus, being duly sworn, each for himself deposes and says that he is a householder in said district and is worth the sum of five hundred (\$500.00) dollars, exclusive of property exempt from execution and over and above all debts and liabilities.

Dated May 18, 1896.

CHARLES STEPP.
PETER TAUTPHAUS.

Subscribed and sworn to before me this 18th day of May, A. D. 1896.

[SEAL.]

F. D. MONCKTON,

Clerk U. S. Circuit Court of Appeals for the Ninth Circuit.

(Endorsed :) Bond on appeal. The form of the within bond and the sufficiency of the sureties thereon are hereby approved. Joseph McKenna, circuit judge. Filed May 18th, 1896. F. D. Monckton, clerk.

290 At a stated term, to wit, the October term, A. D. 1895, of the United States circuit court of appeals for the ninth circuit, held at the court-room, in the city and county of San Francisco, on Monday, the first day of June, in the year of our Lord one thousand eight hundred and ninety-six.

Present: The Honorable William B. Gilbert, circuit judge; Honorable Erskine M. Ross, circuit judge; Honorable Thomas P. Hawley, district judge.

AUSTIN WALRATH, Appellant,
vs.
 THE CHAMPION MINING COMPANY. } No. 243.

On application of Frank Murasky, Esquire, counsel for the appellant, it is ordered that an appeal to the Supreme Court of the United States from the decree of this court, filed and entered herein on the 3rd day of February, 1896, be, and the same is hereby, allowed, and that the bond on said appeal be, and the same is hereby, fixed at the sum of five hundred dollars.

291 In the United States Circuit Court of Appeals in and for the Ninth Circuit.

AUSTIN WALRATH, Appellant,
vs.
 CHAMPION MINING COMPANY, Appellee. }

Know all men by these presents that we, Austin Walrath, as principal, and Peter Tautphaus and Charles Stepp, as sureties, are held and firmly bound unto The Champion Mining Company (a corporation), appellee, in the full and just sum of five hundred (\$500.00) dollars, to be paid the said Champion Mining Company, appellee, its successors and legal representatives or assigns; for which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 1st day of June, in the year of our Lord one thousand eight hundred and ninety-six.

Whereas lately, in the United States circuit court of appeals in and for the ninth circuit, northern district of California, in the matter of an appeal depending in said court between the said Austin Walrath, appellant, and The Champion Mining Company, respondent, a decree, decision, and judgment was rendered against the said

Austin Walrath, and the said Austin Walrath having obtained from the said court an order allowing an appeal to review the decision, judgment, and decree made, rendered, and entered on said appeal, and a citation, directed to the said Champion Mining Company, citing and admonishing it to be and appear at the honorable Supreme Court of the United States, to be holden at Washington, in the District of Columbia, within sixty (60) days from the date of said citation :

Now, the condition of the above obligation is such that if the said Austin Walrath, appellant, shall prosecute his said appeal to effect and answer all damages and costs if he fail to make his
 292 plea good, then the above obligation to be void ; else to remain in full force and virtue.

AUSTIN WALRATH.	[SEAL.]
PETER TAUTPHAUS.	[SEAL.]
CHARLES STEPP.	[SEAL.]

Acknowledged before me the day and the year first above written.

UNITED STATES OF AMERICA, }
Northern District of California, } ss :

Peter Tautphaus, and Charles Stepp, being duly sworn, each for himself deposes and says that he is a householder in said district and is worth the sum of five hundred (\$500) dollars, exclusive of property exempt from execution and over and above all debts and liabilities.

Dated, —.

PETER TAUTPHAUS.
 CHARLES STEPP.

Subscribed and sworn to before me this 1st day of June, A. D. 1896.

[SEAL.]

R. D. McELROY,
*Notary Public in and for the City & County of
 San Francisco, State of California.*

The foregoing bond is hereby approved this — day of June, 1896.

JOSEPH McKENNA,
Circuit Judge.

(Endorsed :) Bond on appeal. Filed June 13, 1896. F. D. Monckton, clerk.

293 United States Circuit Court of Appeals for the Ninth Circuit.

AUSTIN WALRATH, Appellant, }
vs. } No. 243.
 CHAMPION MINING COMPANY. }

I, Frank D. Monckton, clerk of the United States circuit of appeals for the ninth circuit, do hereby certify the foregoing two hundred and ninety-two pages, numbered from one to two hundred and ninety-two, both inclusive, to be a full, true, and correct copy of the printed transcript of record, and of the assignment of errors, and of all proceedings in the above-entitled cause, and that the same together constitute the transcript on appeal to the Supreme Court of the United States therein.

Attest my hand and the seal of said United States circuit court of appeals, at San Francisco, this 18th day of June, A. D. 1896.

[Seal United States Circuit Court of Appeals, Ninth Circuit.]

F. D. MONCKTON, *Clerk.*

294 UNITED STATES OF AMERICA, *ss.* :

The President of the United States to the Champion Mining Company (a corporation), Greeting :

You are hereby cited and admonished to be and appear at a term of the Supreme Court of the United States to be holden at the city of Washington, in the District of Columbia, within 60 days from the date hereof, pursuant to an order allowing an appeal, entered in the clerk's office of the United States circuit court of appeals in and for the ninth circuit, wherein Austin Walrath is the appellant and you are the appellee, to show cause, if any there be, why the decree rendered against the said appellant, as in the said decree & order allowing appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Joseph McKenna, United States circuit judge in and for the ninth circuit, this 18th day of May, A. D. 1896.

JOSEPH MCKENNA,
Circuit Judge.

295 [Endorsed:] Dock. No. 243. U. S. circuit court of appeals for the ninth circuit. Austin Walrath, appellant, *vs.* Champion Mining Company. Citation. Filed May 19th, 1896. F. D. Monckton, clerk.

Service of the within citation and receipt of a copy thereof admitted, as counsel for the appellee, The Champion Mining Company, this 19th day of May, 1896.

CURTIS H. LINDLEY,
HENRY EICKHOFF,
Counsel for Champion Mi. Co., Appellee.

296 UNITED STATES OF AMERICA, ss:

The President of the United States to The Champion Mining Company (a corporation), Greeting:

You are hereby cited and admonished to be and appear at a term of the Supreme Court of the United States to be holden at the city of Washington, in the District of Columbia, within sixty (60) days from the date hereof, pursuant to an order allowing an appeal, entered in the clerk's office of the United States circuit court of appeals in and for the ninth circuit, wherein Austin Walrath is the appellant and you are the appellee, to show cause, if any there be, why the decree rendered against the said appellant, as in the said decree and order allowing appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Joseph McKenna, United States circuit judge in and for the ninth circuit, this 13th day of June, A. D. 1896.

JOSEPH McKENNA,
Circuit Judge.

297 [Endorsed:] No. 243. U. S. circuit court of appeals for the ninth circuit. Austin Walrath *vs.* The Champion Mining Company. Citation.

Service of the within citation and the receipt of a copy thereof hereby admitted this 17th day of June, 1896.

LINDLEY & EICKHOFF,
Attorneys for Appellee.

Endorsed on cover: Case No. 16,379. U. S. cir. court of appeals, ninth circuit. Term No., 600. Austin Walrath, appellant, *vs.* The Champion Mining Company. Filed September 8th, 1896.

7^o 230.

APR 21 1898
JAMES H. M. KENNEY,
CLERK

Case of Austin Walrath vs. Champion Gold Mining Co.

Filed April 21, 1898.

SUPREME COURT OF THE UNITED STATES

AUSTIN WALRATH,

Appellant,

CHAMPION GOLD MINING CO.,

Appellee.

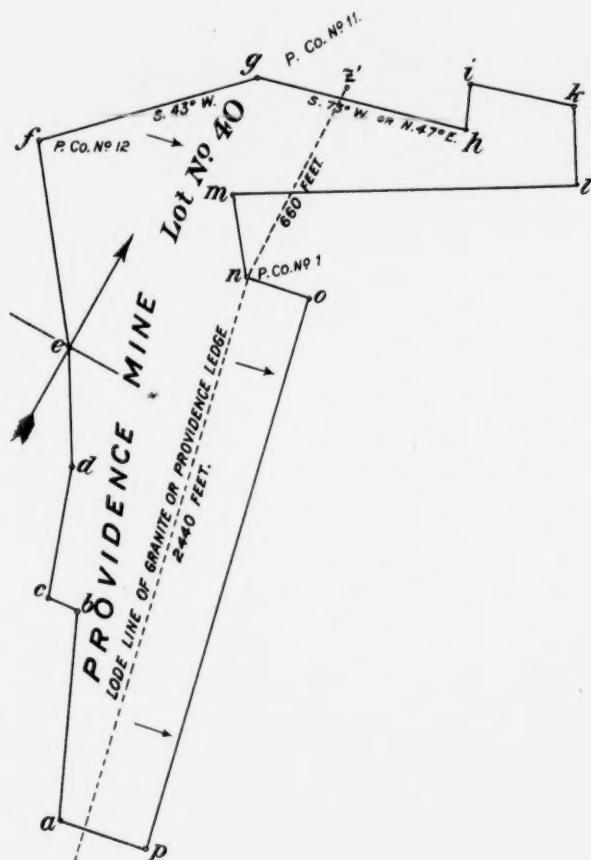
BRIEF FOR APPELLANT.

JAMES F. SMITH,
DANIEL TITUS,
R. R. HIGGLOW,

Solicitors for Austin Walrath.



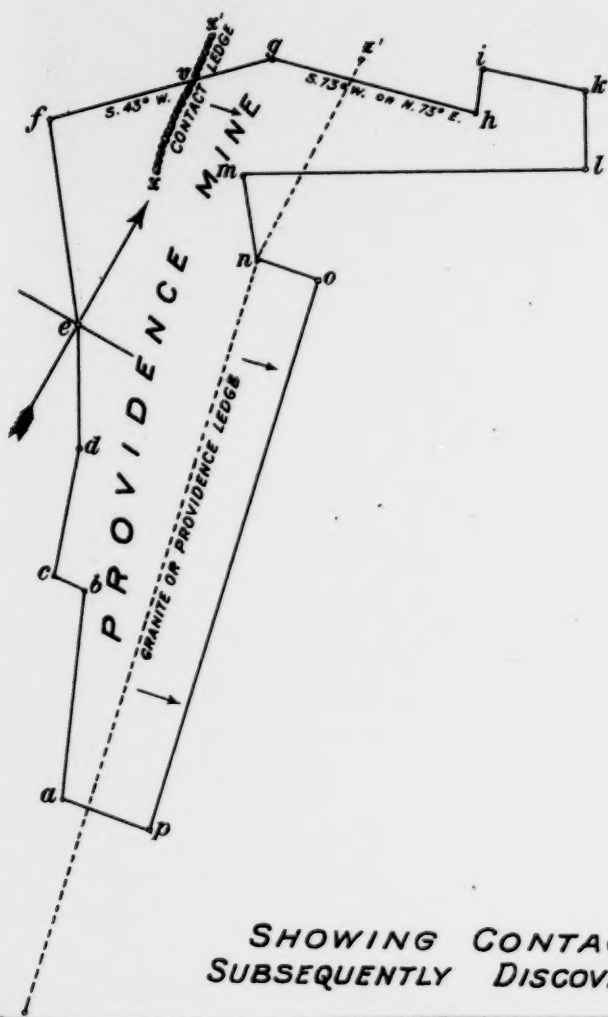
FIG. 1.



PROVIDENCE LEDGE AND SURFACE
GROUND AS PATENTED



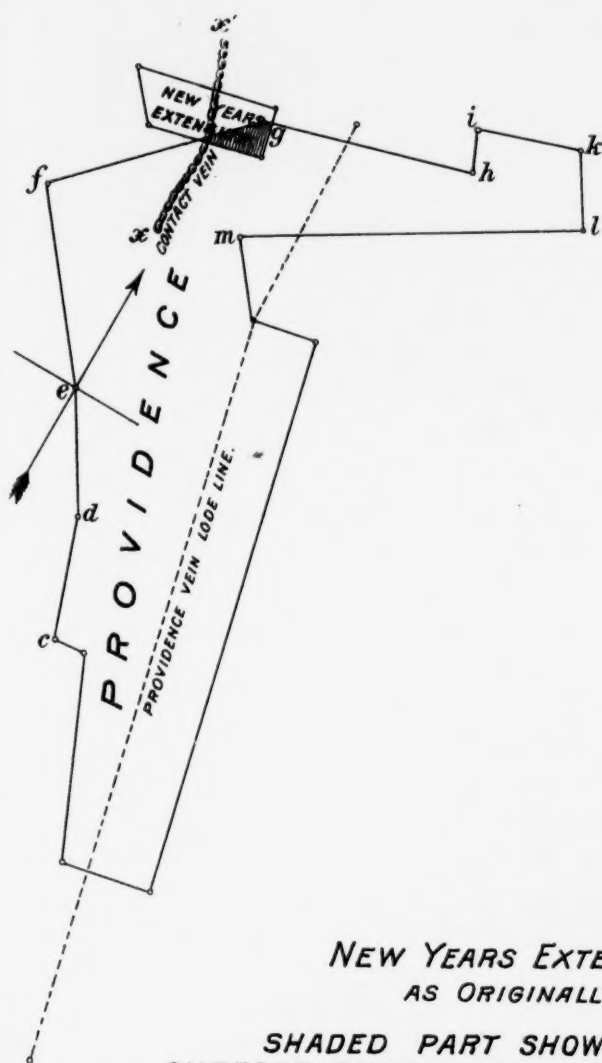
FIG. 2.



SHOWING CONTACT LEDGE
SUBSEQUENTLY DISCOVERED.



FIG. 3.



NEW YEARS EXTENSION
AS ORIGINALLY LOCATED.

SHADED PART SHOWING LODE AND
SURFACE CONFLICT WITH PROVIDENCE.

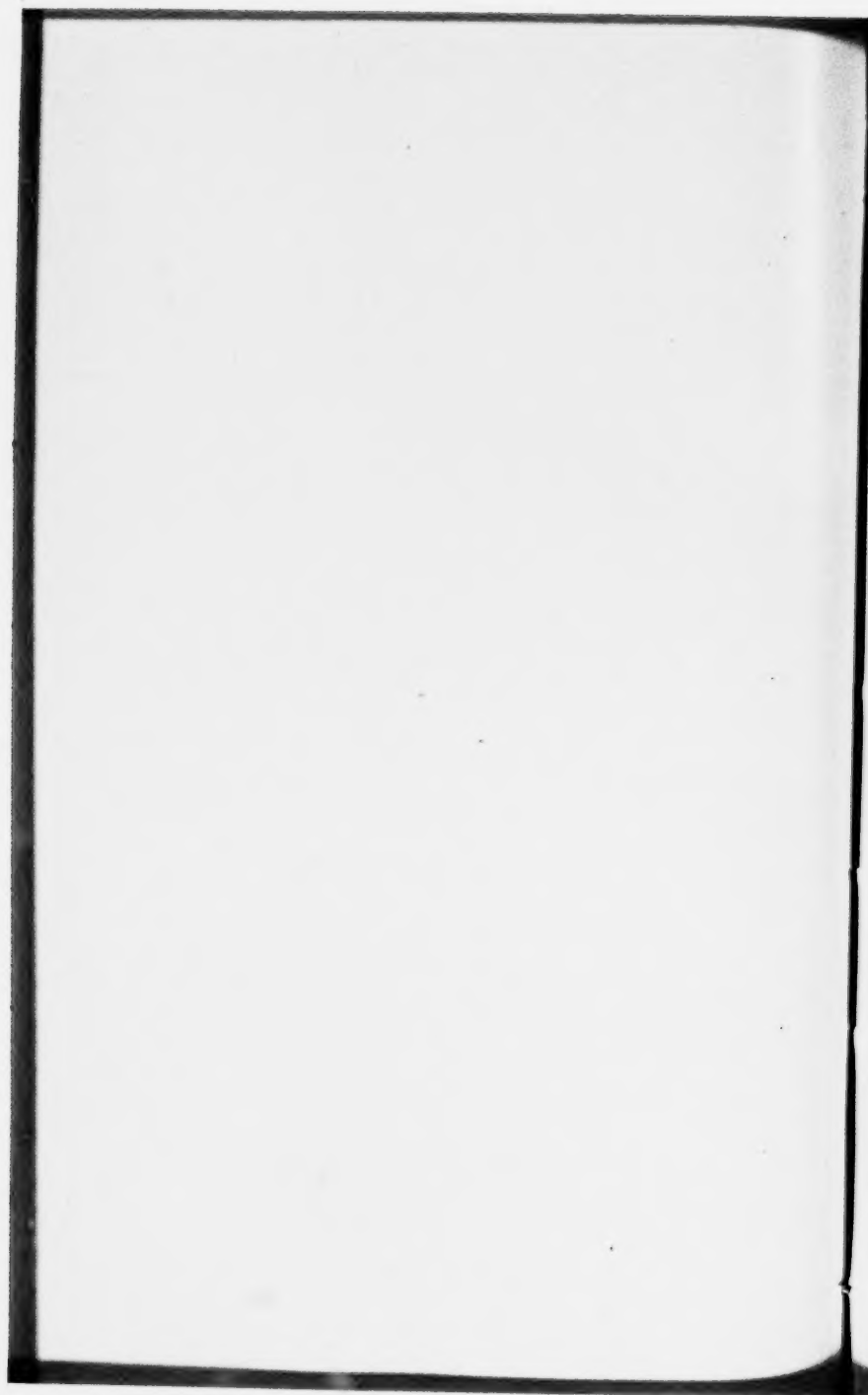
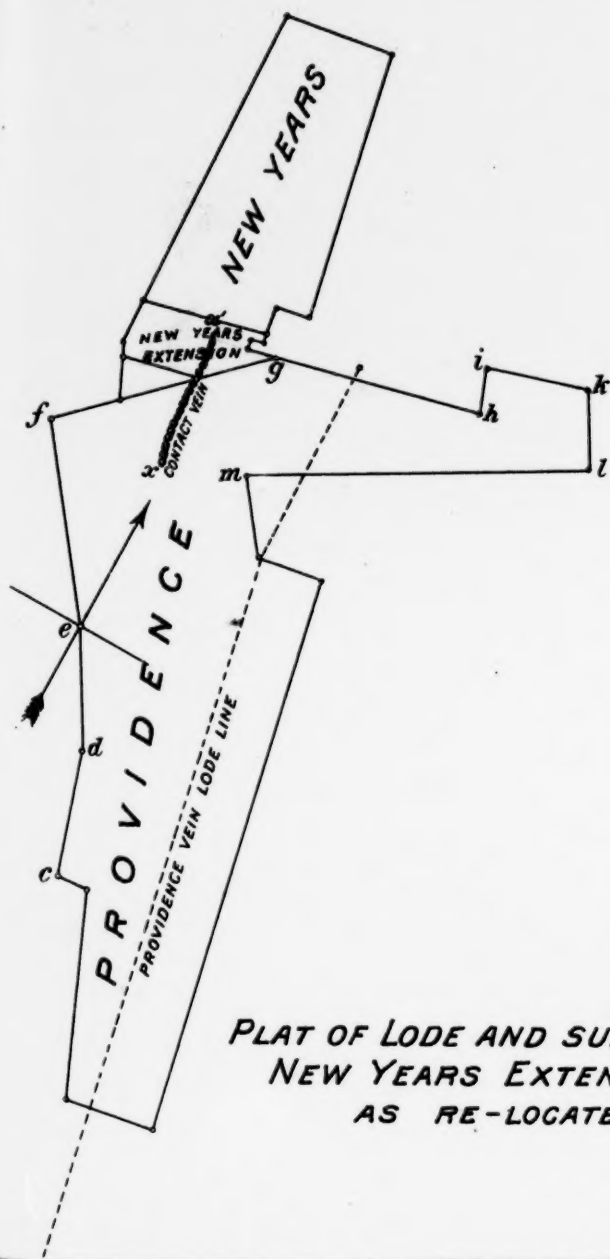


FIG. 4.



PLAT OF LODGE AND SURFACE OF
NEW YEARS EXTENSION
AS RE-LOCATED.

IN THE
SUPREME COURT
OF THE
UNITED STATES.

AUSTIN WALRATH,

Appellant,

vs.

CHAMPION GOLD MINING COM-
PANY,

Appellee.

STATEMENT OF THE CASE.

This action, brought in the Superior Court of Nevada County, California, involves title to a triangular shaped section of what is known as the "Contact," "Ural," or "Back" ledge of gold-bearing ore, situated in the same county, claimed by complainant to be a portion of the Providence Mine, to which complainant has title through a patent from the United States, and by defendant, a corporation, to be a part of the New Years Extension Mine owned by it.

The relative situation of the two properties and the portion of the ledge in controversy is shown upon figure 6, in front of this Brief; the disputed section being contained between the lines thereon marked "Line claimed by Providence" and "Line claimed by Champion."

The figures marked "New Years" and "New Years Extension" represent the surface of the mining properties

owned by defendant, while that marked "Providence Mine" represents the surface of the patented ground of the plaintiff.

The action was brought May 24th, 1892, to recover \$300,000.00 damages for ore extracted from the ledge and carried away by the defendant, and for an injunction against further trespasses thereon.

Upon motion of appellee the action was removed to the United States Circuit Court, as involving a federal question, where the complainant recast his pleadings so as to separate the action into a bill in equity, upon which the action is now proceeding, and an action at law for the damages alleged.

The suit in equity was tried in the Circuit Court and decided mainly in favor of the appellee.

From this decree the complainant appealed to the Court of Appeals for the Ninth Circuit, where it was modified, and, as modified, affirmed.

The appellant now brings the case to this court upon writ of error from the Court of Appeals.

The complainant's title is deraigned as follows: In 1857, under the miner's rules and customs then in force, thirty-one locators located thirty-one hundred feet of the Providence or Granite Lode. By mesne conveyances the title to this location became vested in the Providence Gold and Silver Mining Company, and on April 28th, 1871, that company obtained a patent to thirty-one hundred feet of the lode, and for surface ground as described in the patent. (See Transcript, pages 250-5, where the patent is set out at length, and figure 1, which is a reproduction of the essential features of the plat accompanying the patent.)

The title thus granted to the Providence Gold and Silver Mining Company was, before the commencement of this suit, vested in the complainant.

The ledge, as granted by the patent, extends thirty feet north of the north surface line of the location, and some six hundred and eighty feet south of the south surface line.

The patent conveyed only the Providence ledge and the surface ground. All other ledges contained within the surface lines were expressly reserved.

But by the act of Congress of May 10th, 1872, exclusive possession of all the surface included within the lines of the location was granted to the owners of the Providence, together with all other lodes or ledges having their tops or apexes within such surface lines. This grant, of course, included the Contact vein, subsequently discovered within said boundaries, and now constituting the bone of contention in this action.

The Contact vein is shown upon figure 2, and crosses the surface line f-g of the Providence location.

On September 29th, 1877, the appellee and defendant, the Champion Mining Company, made a location upon the Contact vein called the New Years Extension Mine. This location overlapped, both as to surface ground and lode, upon the Providence location; that is, the lode line and surface lines of the said New Years Extension extended to the south of the boundary line f-g of the Providence location.

The New Years Extension Mine is shown on figure 3, together with the conflict caused by the overlap; the con-

flicting surface portions being shaded, and showing the Contact vein passing through it.

In the year 1884 the complainant and his co-owners objected to the overlap, and demanded of the Champion Mining Company that it abandon all claims to the surface and lode to the south of the Providence boundary line, above described. Thereupon, in the month of November, 1884, John Vincent, the superintendent of the defendant, the Champion Mining Company, under the authority and by the direction of the said company, relocated the New Years Extension Mine by a notice of relocation, in which the fact of the overlap under the original location was particularly recited, and the lines were readjusted so as to avoid the overlap and to conform to said line f-g of the Providence Mine. (See figure 4, which shows the boundaries of the New Years Extension as relocated.)

In the notice of relocation the lode line was particularly described as follows: "The lode line of this claim as originally located, and which I hereby relocate, is described as follows: Commencing at a point on the northerly bank of Deer creek, which point is 60 feet S., 11 degrees 45 minutes east of the mouth of the New Years tunnel, and running thence along the line of the lode towards the N. E. corner of the Providence mill, about S. 46 degrees 15 minutes east, 200 feet, more or less, to a point and stake on the northerly line of the Providence Mine, patented, designated as Mineral Lot No. 40 for the south end of said lode line."

It also contained the following statement:

"And whereas, part of this claim, as originally described and as hereby relocated, conflicts with the rights granted by the letters patent of said Providence Mine, said Lot No. 40, now, therefore, so much of this claim, both for lode and surface ground, as originally conflicted or now conflicts with any portion of the surface or lode claims or rights granted by said patent, is and are hereby abandoned, which portion of this claim so abandoned is described as follows: All that portion of the above described New Years Extension Claim for surface and lode which lies south of the northern boundary line of said Providence Mine, which runs north 43 degrees, 10 minutes east, across the southeastern corner of this claim."

The New Years Extension, as relocated, is coterminous with the Providence Mine on the northerly boundary line, designated as the line f-g, running south 43 degrees west.

That line is the only boundary between the two properties, and the only boundary of the Providence location which is crossed by the Contact ledge. After the relocation, all the mining operations of the Champion Mining Company on the Contact ledge, until the trespasses now complained of, were made to conform to the lines of the New Years relocation, and so as not to conflict with the Providence. (See Transcript, pages 154-5.)

The defendant thereafter laid out and sunk an inclined shaft parallel with the line f-g of the Providence, and that line extended in its own direction, so as not to cross or conflict with that line.

From this shaft, levels were run every hundred feet up on the Contact vein, but none of them ever crossed that line until about three months before this suit was begun, when the 1,000 foot level was driven across it into the ground in dispute. Subsequently, the eighth and ninth levels were driven across.

The work done by the Providence was carried on through a shaft sunk on the Providence or Granite ledge, from which shaft a crosscut was run back to the Contact vein on the 600 foot level, and another on the 1,250 foot level, and much of the ground now in controversy was thereby prospected and opened up by complainant and his co-owners. (See fig. 5.)

The main workings of both companies are shown on figure 5. The small lines running from the Champion shaft represent the levels run by the defendant, along the strike of the Contact vein.

The claims of the respective parties will be readily understood by reference to figure 6, which shows the relative position of all the mining properties belonging to both, with the lines claimed by them.

The portion of the Contact vein in dispute is that upon the dip of the ledge lying between the line marked "Line claimed by Providence" and the line marked "Line claimed by Champion."

The apex of the Contact vein is represented by the dotted line $x-x^1$, and shows the vein as far as exposed in both the Champion and Providence ground. South of x , the course of the vein in the Providence ground is unknown.

The line $f-g$ is the same line as that designated $A-B$ by some of the witnesses.

Upon the trial the Circuit Court held that there could be but one end line for each end of the Providence location, and that the lines g-h and a-p constituted such end lines; that such lines constituted the end lines of not only the originally discovered Providence lode, but also of every other vein that might be discovered within the surface lines of the location. But, notwithstanding this holding, in entering the decree the line f-g was also established as an end line of the Contact vein, but for its length only, and then that from "g" the line g-h, and that line extended indefinitely eastwardly, constituted another end line for the same end of the lode, and constituted the line through which the plane determinative of all extralateral rights in the vein must be drawn.

From this decree the appellant here was allowed an appeal to the Circuit Court of Appeals.

The latter court established the line g-h-h¹ as the sole end line of the Contact vein, and reversed the decree of the Circuit Court in so far as it fixed the line f-g as an end line.

As a result of this decree the complainant was not only shut out of all extralateral rights in the Contact vein north of the line g-h-h¹, but also of that portion of the vein lying vertically beneath the surface lines of the Providence which extend north of that line, and which are marked upon the figures as constituting the parallelogram h-i-k-h¹, which was awarded to the Champion. (See figure 6, showing the end line fixed by the Circuit Court, and that line as subsequently fixed by the Court of Appeals, with the latter line extended in its own direction both eastwardly and westerly.)

From the judgment of the Circuit Court of Appeals the appellant has appealed to this Court, and assigns the following errors:

Assignment of Errors.

I.

The United States Circuit Court of Appeals for the Ninth Circuit erred in holding that the surface line of the Providence Mining Claim, described in appellant's bill of complaint as running S. 43 degrees W., was not the northerly end line of the ledge designated in said bill of complaint and in appellee's answer thereto as the "Back or Ural or Contact" Ledge.

II.

The United States Circuit Court of Appeals in and for the Ninth Circuit erred in holding that the appellant is the owner only of so much of the "Ural or Contact" ledge within the surface ground of the Providence Mining Claim as lies S. of plane drawn vertically downward through that surface line of said Providence mining ground continued indefinitely in its own direction, which is designated in said decree by the letters g-h, and described in said bill of complaint as running from the top of a large boulder on the S. bank of Deer creek, S. 73 degrees W. along the S. side of Deer creek, 9 chains and 80 links to the top of a boulder 8 feet in diameter in the bed of the said creek.

III.

The United States Circuit Court of Appeals in and for the Ninth Circuit erred in holding that the appellee was the owner of all such portions of the "Ural or Contact" ledge as lie N. of the plane drawn through the line continued indefinitely in its own direction, which is designated in said decree by the letters g-h, and described in said bill of complaint as running S. 73 degrees W. along the S. side of Deer creek, from the top of a large boulder on the south bank of said creek, 9 chains and 80 links to the top of a boulder 8 feet in diameter in the bed of said creek.

IV.

The said United States Circuit Court of Appeals erred in deciding and holding that appellant and his co-owners were only entitled to such portions of the "Back or Contact" ledge as lie between vertical planes drawn downward through the lines described in its decision and decree as g-h and a-p, continued indefinitely in their own direction.

V.

The United States Circuit Court of Appeals in and for the Ninth Circuit erred in not holding that the complainant and his co-owners were the owners and entitled to all such parts of said "Contact or Ural" ledge as lie southeasterly of the line described in said bill of complaint as running S. 43 degrees W. and S. E. of a bounding plane drawn through said line prolonged indefinitely in its own direction.

VI.

The United States Circuit Court of Appeals in and for the Ninth Circuit erred in fixing and determining any of appellant's right to said "Ural or Contact" ledge by a bounding plane drawn through the said line described as running S. 73 degrees W.

VII.

The United States Circuit Court of Appeals in and for the Ninth Circuit erred in not fixing said line running S. 43 degrees W. as the only end line by which the right of the appellant should be determined in his pursuit of said "contact or Ural" ledge beyond his surface ground.

VIII.

The United States Circuit Court of Appeals in and for the Ninth Circuit erred in not enjoining appellee from pursuing said "Contact or Ural" ledge S. E. of said line running S. 43 degrees W. and S. E. of a bounding plane drawn through said line prolonged indefinitely in its own direction.

IX.

The United States Circuit Court of Appeals in and for the Ninth Circuit erred in allowing and permitting appellee to enter within the surface lines of the Providence mining ground, cut down vertically to the center of the earth, and to take therefrom any part or portion of the said "Back of Contact" ledge, or any ledge.

X.

The United States Circuit Court of Appeals in and for the Ninth Circuit erred in not holding that the appellant and his co-owners were entitled to the absolute use and enjoyment of every ledge within the surface lines of said Providence Mining Claim cut down vertically to the center of the earth.

Argument.

There are some arguments which apply especially to the ninth and tenth assignments of error, and we consequently consider them first.

They refer to that portion of the Contact vein within the Providence boundaries which lies north of the north end line fixed by the Court, and which is described upon Figure 6 as the parallelogram bounded by the lines marked h-i-k-h¹.

The owner of a mining location is the owner of every part of every ledge situated within the surface lines of his location extended downward vertically, the top or apex of which ledge is also within his boundaries.

We base this contention upon the following provisions of the act of May 10th, 1872.

"The locators of all mining locations heretofore made, "or which shall hereafter be made, on any mineral vein, "lode, or ledge situated on the public domain, their heirs "and assigns, where no adverse claim exists on the tenth "day of May, eighteen hundred and seventy-two, so long "as they comply with the laws of the United States, and "with State, territorial, and local regulations not in con-

"flict with the laws of the United States governing their
 "possessory title, shall have the exclusive right of pos-
 "session and enjoyment of all the surface included within
 "the lines of their locations, and of all veins, lodes, and
 "ledges throughout their entire depth, the top or apex of
 "which lies inside of such surface lines extended down-
 "ward vertically, although such veins, lodes, or ledges
 "may so far depart from a perpendicular in their course
 "downward as to extend outside the vertical side lines of
 "such surface locations. But their right of possession
 "to such outside parts of such veins or ledges shall be con-
 "fined to such portions thereof as lie between vertical
 "planes drawn downward, as above described, through
 "the end lines of their locations, so continued in their own
 "direction that such planes will intersect such exterior
 "parts of such veins or ledges. And nothing in this sec-
 "tion shall authorize the locator or possessor of a vein or
 "lode which extends in its downward course beyond the
 "vertical lines of his claim to enter upon the surface of a
 "claim owned or possessed by another."

Act of May 10, 1872, sec. 2.

Sec. 2322, U. S. Rev. Statutes.

That section gave the locators of mining claims, there-
 tofore located, "the exclusive right of possession and en-
 joyment of all the surface included within the lines of
 their locations, and of all veins, lodes, and ledges through-
 out their entire depth, the top or apex of which lies in-
 side of such surface lines extended downward vertically."

We stop the quotation here. As will be readily seen,
 all the rest of the section applies to the rights granted

the locator in veins or ledges outside the lines of his location; that is, his rights in ledges after they have passed upon their dip from beneath the surface lines of the location.

But the language quoted gives him absolutely all veins, lodes, and ledges, without regard to end lines or end-line planes, which are found within the surface lines of his location extended downward vertically, the tops or apexes of which also lie within such boundaries so extended.

The top or apex of a ledge is the end or edge of the ledge which approaches nearest to the surface, and it is often a line of great length.

Larkin v. Upton, 144 U. S. 19.

Any mining location which contains this end or edge, has within it the top or apex of a vein.

It is undisputed that the Providence location does contain within its boundaries several hundred feet of the top or apex of the Contact vein.

It is undisputed that a portion of that Contact vein lies beneath that part of the Providence location contained within the lines $h-i-k-h^1$ extended downward vertically.

This portion lies north of the boundary line $g-h$ and its prolongation h^1-h^u , fixed by the Court as the northern boundary of the Providence location, and consequently, by the decree, the plaintiff is deprived of a portion of a vein within his boundaries, the top or apex of which is also within his boundaries.

We submit that it is scarcely possible to show error more clearly.

The only answer heretofore attempted to be made to this is, that while the Providence location does have a portion of the apex of the Contact vein, it does not have that portion of the apex which overlies the vein where it passes beneath h-i-k-h¹.

We answer that it is unnecessary for it to have such overlying apex. The statute does not use the word "overlying." The grant is absolute. It is of all of every vein lying within the boundaries of the location, of which the top or apex also lies within the surface lines extended downward vertically.

The Courts do not have the power to amend the act so as to include the condition that it must also be the "overlying" apex.

In no case coming under our observation other than the present has it ever been held or suggested that even as to outside parts of the vein—that is, parts of the vein which, upon its dip, have departed entirely from the side lines of the location—the "overlying" apex cuts any figure.

Whether, upon the dip, the plane of the location shall descend into the earth at right angles with the strike of the vein, so that the apex would overlie that portion of it owned by the location, or to the right or left, so that it would not so overlie, depends upon the angle of the end lines of the location, the distance from the surface, and the dip of the vein.

Figure 7, opposite this page, will illustrate this point. In this figure, if the ore were found upon the dip of the ledge, as is assumed, "A" being the senior location, the ore would belong to it, although the overlying apex is in "B." This principle is illustrated by the Argentine-Ter-

FIG. 7.

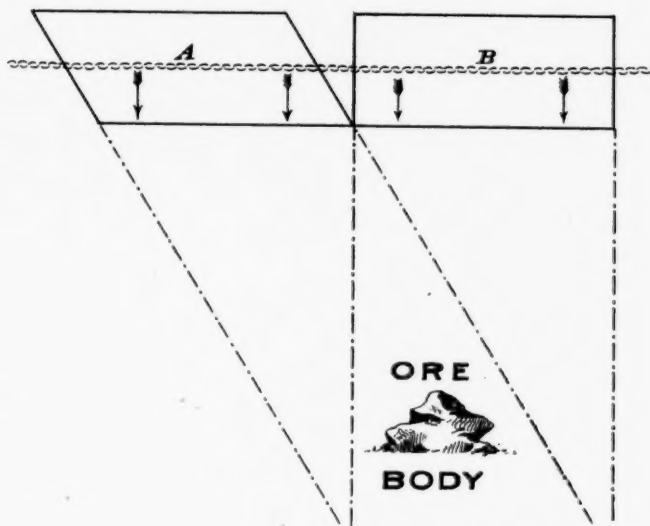
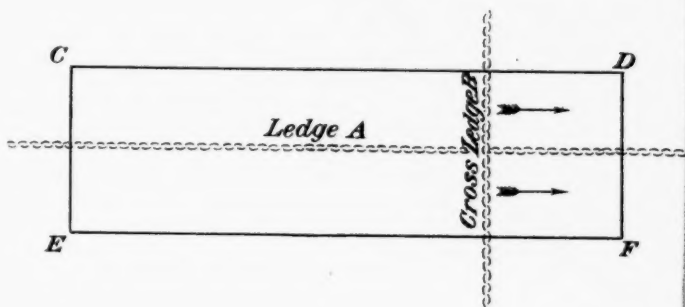
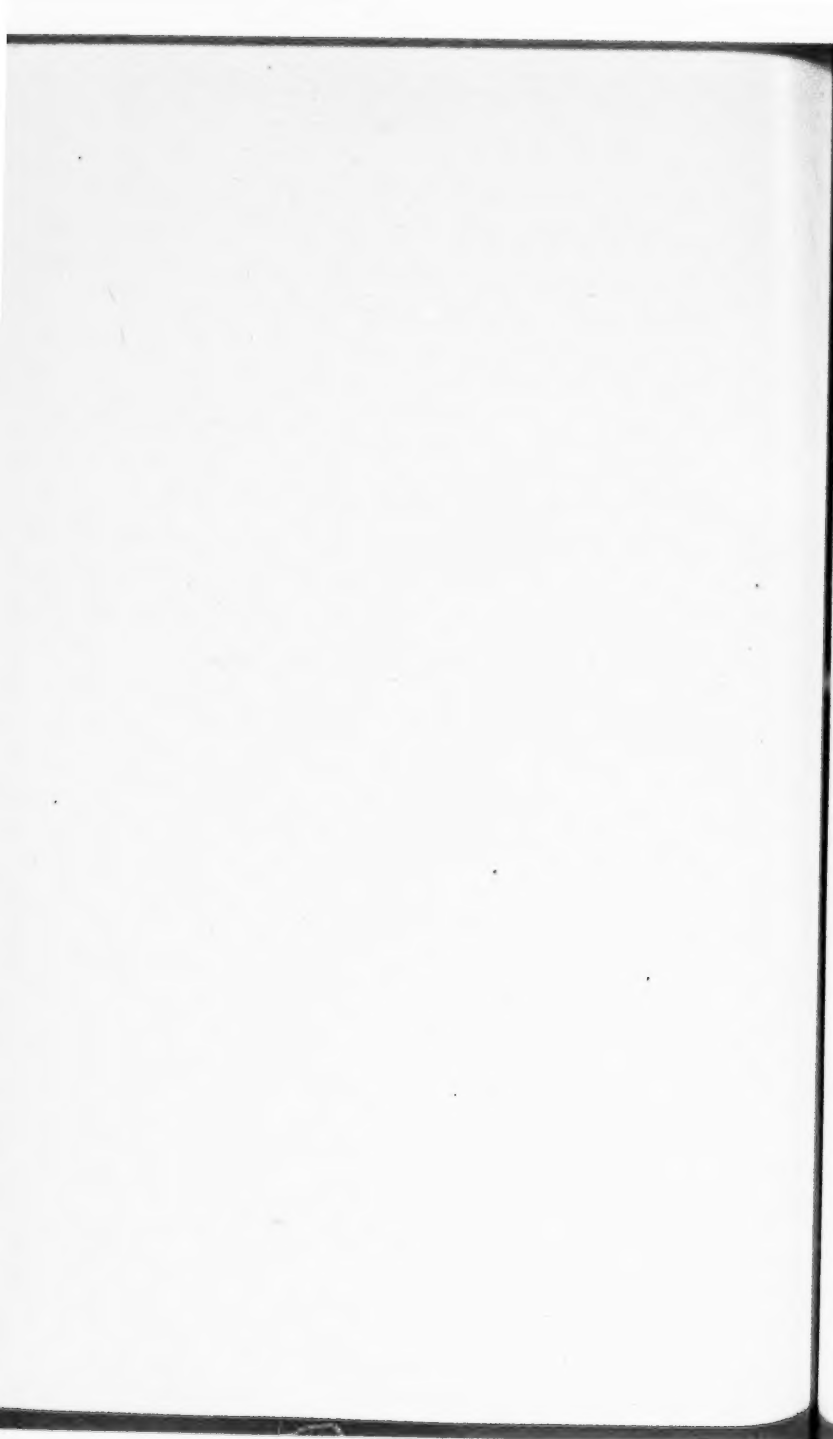


FIG. 8.





rible Case, 122 U. S. 478, and is clearly stated and illustrated in Lindley on Mines, section 365. See, also, section 487 of the same author, where a diagram is given of the locations involved in the Argentine-Terrible case.

If this is the case as to parts of the vein lying perhaps hundreds of feet to the side of the location, it certainly should be equally true as to parts within its boundaries.

Had the north boundary line of the Providence location run straight from the point marked "f" to the point marked "i" on the figures, there can be no question but that line would have constituted the end line of the Contact vein, and consequently that the ore found within the parallelogram now being considered, belonged to the Providence. The only difference between that case and the situation here is, that the line here runs irregularly to the same point. But that, in a location made under the law of 1866, as will be hereafter abundantly shown, cannot possibly make any difference, because under that act end lines did not have to be straight, nor parallel with one another. The result is that the ore must belong to the Providence, just as much as it would if the line were straight.

The Circuit Court of Appeals erred in fixing the line g-h-h' as the northern end line of the Providence location, and in bounding the complainant's rights in the contact vein by the plane of that line, instead of by the plane of the line f-g.

Assignments of error 1-8 refer in different forms to the alleged error of the Court in fixing the line g-h-h' of the Providence as the end line of the Contact vein, instead of the line f-g-g', and they may be conveniently considered together.

The patent of the Providence ledge was conclusive evidence of complainant's title to thirty-one hundred feet in length of that vein. This carried the northern end of the ledge thirty feet beyond the line fixed by the Court.

The language of the grant with respect to the ledge is: "It being the intent and meaning of these presents to convey unto the Providence Gold and Silver Mining Company, and to their successors and assigns, the said vein or lode in its entire width for the distance of thirty-one hundred (3100) feet along the course thereof."

The width of the ledge is the distance between the walls.

We have here the length and width of the Providence ledge, as granted by the patent.

The validity of this grant of the ledge beyond the north boundary line is only incidentally involved here, but in that respect it is important as tending to throw light upon the question of whether that line should be treated as the northern end line of the Contact ledge. If it is not

the end line of the Providence location, then certainly there is no reason for holding it to be the end line of the Contact vein.

Under the provisions of the act of 1866, under which the Providence patent was obtained, it was unnecessary that surface ground should be taken in order to obtain the ledge. Prior to 1872 locations were made upon the ledges without regard to surface ground. If any surface ground was permitted by the local rules and regulations to be taken in connection with the vein, it was as a mere incident thereto, and for the convenient working of the same.

Lindley on Mines, secs. 58, 567.

The act of 1866 was but the crystallization of the miners' rules and customs.

Jennison v. Kirk, 98 U. S. 453.

Broder v. Natoma Water Co., 101 Id. 275.

There is no provision in the act of 1866, as there is in that of May 10th, 1872, requiring surface ground to be staked or located or taken in the location of a ledge, or in connection with a patent to a mining claim.

Surface ground being taken simply for the convenient working of the ledge, it could all be taken on either or both sides of the ledge or at the end, or there might be no surface at all taken, except as it would be included within the walls of the ledge.

Lindley on Mines, sec. 59.

As shown by that author, it was the practice of the land department under that act to issue patents for veins alone, without surface ground on either side.

There is nothing in the act indicating that a patent to a lode, intentionally issued as this one was for thirty feet of the Providence lode north of the surface line therein described, is not entirely valid, nor, so far as we have been able to find, has it ever been decided that it was not.

The Flagstaff Case, 98 U. S. 463, *King v. Amy & Silver-smith Min. Co.*, 152 U. S. 222, and cases announcing the same principle as those cases, are not in point here.

In those cases locations had been made along what was supposed to be the line of the lode, and patents issued in the same manner. The patent showed no purpose or intention to grant a ledge separate from the patented surface.

Subsequently it was found that the ledge left the side line of the patented ground, and the question was whether the owner could follow it wherever it might run, regardless of the patented lines, and regardless of the rights of others who had made locations outside those lines, and it was held he could not. No intention was there shown to grant a ledge outside the surface boundaries.

But in the case at bar, the purpose, clearly stated and restated, was to grant over seven hundred feet of the ledge lying entirely outside the surface lines. This fact was also clearly marked upon the plat accompanying the patent, of which, as to that, Fig. 1 herein is a reproduction.

See Patent in Transcript, page 250.

There was here no mistake as to the course of the vein, and no intention to cover it by the surface lines of the patent. In the Flagstaff and similar cases, a patent having been granted for a vein and surface ground running in one direction, the question was whether a vein located by others running in a different direction, and outside the patented ground, could be held under that patent. Here the question is whether, under the act of 1866, a patent for part of a vein, correctly describing it, is valid without surface ground being included on each side. We contend that it is.

If it is, then the line ~~fg~~^{g-h} is not the end of the location, but the location extends 30 feet farther north.

Before patent, the United States owns the mineral land the same as any other proprietor. It could grant ledges separate from the surface ground if it saw fit so to do.

Mr. Lindley says: "The government, being the owner of the fee, may carve from it the ownership of the vein. It may grant the surface to one and the vein to another."

Lindley on Mines, sec. 568; see also sec. 600.

The law authorized a grant in the form in which it was made in this case. Why should it not convey to the patentee all of the vein that it purports to convey?

We believe it did, and consequently that the line g-h-h¹ fixed by the Court is not, nor was it intended to be, an end line of the location, but simply one of the exterior lines of the surface ground.

In fact, under the act of 1866, that is all that any boundary line amounted to, as it had no necessary connection with the vein itself.

The patent to the Providence Mining Claim having been granted April 28th, 1871, the rights of the complainant as to that lode must be measured by the provisions of the act of 1866, then in force.

If his title to thirty-one hundred feet of the lode was valid then, it is valid still. By the patent it became a vested right, that could not be subsequently impaired or destroyed, even if attempted, which it was not.

Lindley on Mines, sec. 539.

FORM OF LOCATION UNDER THE ACT OF 1866.

Under the act of 1866, the patenting of the Providence Mine in its irregular shape was in all respects legal and proper.

That act did not require the location to be made in the form of a parallelogram or in any particular form, nor was there any requirement that the end lines should be parallel.

Iron S. M. Co. v. Elgin M. Co., 118 U. S. 196, 208.

See, also, Lindley on Mines, sections 58, 573, 576-77, 594, where these questions are ably discussed and the above conclusions announced.

Under that law but one vein could be included in a location, nor, no matter how much surface ground might be included in a patent, could title be obtained for more than one vein. Section 3 of the Act of 1866 expressly so provided.

14 Stat. at Large, p. 251.

Prior to the Act of 1872, had other ledges been discovered within the surface lines of a patented mining claim, they might have been located by a stranger, and the locator would have had the right to follow them and work thereon within such surface lines.

The foregoing was the situation when the act of 1872 was passed.

Change worked by the enactment of the law of May 10, 1872, in the ownership of other veins found within the patented surface of mining claims.

Section 3 of the act of 1872, already quoted, applied to mining locations theretofore, as well as thereafter, made, and granted to the then owners of such locations, "the exclusive right of possession and enjoyment of all the surface included within the lines of their locations, and all veins, lodes, and ledges, throughout their entire depth, the top or apex of which lies inside of such surface lines extended downward vertically."

This act constitutes the source of the plaintiff's title to the Contact vein now in dispute in this action.

Subsequent to the granting of the patent to the Providence Mining Claim, and subsequent to the enactment of the law of May 10th, 1872, the Back or Contact vein was discovered running across the plaintiff's boundary line, f-g, and into defendant's mining claim called the New Years Extension. The New Years Extension was located in 1877—twenty years after the location of the Providence, six years after it had been patented, and five years after the passage of the law of 1872.

For many years the line f-g and its extension, f-g-g¹, was recognized and treated by the parties as the bounding plane between their mines, and it was not until three months prior to the commencement of this action that the defendant crossed it into what is claimed to be the complainant's ground, on the one thousand foot level.

Our contention is that the line f-g, being the line of the Providence location which crossed the onward strike of the Contact vein, must be held to be the end line of that ledge, and the line fixing the rights of the parties.

WHAT ARE END LINES?

We contend that, especially under the act of 1866, the boundary line of a location which crosses a ledge upon its strike must be held to be the end line of that ledge.

On the other hand, the defendant contends, or at least the Court ruled, that we must ascertain the original end line of the location, and that this line constitutes the end line of every vein found within the exterior boundaries of the claim.

Upon this point, this is the controversy in a nutshell.

(Should the line f-g-g¹ be held to be the dividing line between these mines, it will be unnecessary to consider the point, already argued, as to the ownership of that part of the Contact ledge lying beneath the parallelogram h-i-k-h¹, as such a ruling would establish our right therein along with all the rest of the ground situated south or southeast of that line extended indefinitely.)

In locations made under the act of 1866, unless required by local regulations, there was no occasion for end

lines. While as to the lode, as suggested in the Eureka Case, 4 Saw. 302, end lines were doubtless implied in the sense that a vein must have some thickness, and must end somewhere, and consequently that wherever it did end there would be a line, still there was no occasion for it to be in any way marked or fixed upon the surface. As the lode could be located and patented without adjoining surface, and the end of the vein could be determined merely by measurement, there was no occasion to fix end lines, nor, perhaps, any line, unless it was to bound surface rights.

It clearly appears that such was the only purpose in fixing the surface lines here; there can be no dispute as to this except as to the lines crossing the Granite ledge, and as the calls of the patent show conclusively that rights in the vein were not intended to stop where the surface line crossed it, in no sense did the boundary line become an end line of the location, nor was it intended or understood to be such. Had the owner at that time been asked whether that was the end of his location, he would most certainly have answered emphatically that it was not.

Considerable attention has been paid to this question, because the fact that the Providence vein, the one originally located, happens to cross the line g-h, seems to be the only reason for holding it to be an end line of the location, in preference to other lines.

Of course, if it is not the end line of the location, then there is no possible reason for holding it to be the end line of the Contact ledge.

But admitting for the argument, that it does constitute an end line of the location within the meaning of the law of May 10th, 1872, does it constitute the end line of the contact vein?

The end line of a lode is the boundary line which crosses it, regardless of whether it was originally intended as an end line or side line. Four times has this principle been sustained by this Court.

Mining Co. v. Tarbet, 98 U. S. 463.

Iron Silver-Elgin case, 118 U. S. 196.

Argentine-Terrible Case, 122 U. S. 478.

King v. Amy & Silversmith M. Co., 152 U. S. 222.

In Mining Company v. Tarbet, speaking of the act of 1866 and that of 1872, the Court said:

"We think that the intent of both statutes is that mining locations on lodes or veins shall be made thereon lengthwise, in the general direction of such veins or lodes on the surface of the earth where they are discoverable; and that the end lines are to cross the lode and extend perpendicularly downwards, and to be continued in their own direction either way horizontally; and that the right to follow the dip outside of the side lines is based on the hypothesis that the direction of these lines corresponds substantially with the course of the lode or vein at its apex on or near the surface. It was not the intent of the law to allow a person to make his location crosswise of the vein, so that the side lines shall cross it, and thereby give him the right to follow the strike of the vein

"outside of his side lines. That would subvert the whole "system sought to be established by the law. If he does "locate his claim in that way, his rights must be subordi- "nated to the rights of those who have properly located "on the lode." And again, that the end lines of the claim, properly so called, are "THOSE WHICH ARE CROSS- "WISE OF THE GENERAL COURSE OF THE VEIN "ON THE SURFACE."

The other three cases, although decided under the act of 1872, are equally pointed.

These cases are of course conclusive of this contro- versy, if they are in point. But it is claimed they are not, and the learned Judges of the lower courts must have been of that opinion.

THE IRON SILVER-ELGIN CASE.

The Circuit Judge held that the line g-h was the end line of the location; that there could be but one end line, no matter whether the vein did or did not cross it, and that consequently it was also the end line of the Contact vein. (As will be noticed, he also, to some extent, adopt- ed the line f-g as a boundary.) He seems to have rested this view upon the authority of an expression used, ar- guendo, by Mr. Justice Field in pronouncing the opinion in *Iron Silver M. Co. v. Elgin M. Co.*, 118 U. S. 196, 207, as follows:

"It often happens that the top or apex of more than "one vein lies within such surface lines, and the veins "may have different courses and dips, yet his right to

"follow them outside of the side lines of the location
 "must be bounded by planes drawn vertically through
 "the same end lines. The planes of the end lines cannot
 "be drawn at a right angle to the courses of all the veins
 "if they are not identical."

We say that this was an expression used *arguendo*, because no question of that kind was there involved. There was but one ledge in that case, so there was no occasion to consider what would be the law if there had been more, except by way of argument or illustration.

Aside from this, we respectfully submit that this language was not intended, even by the learned Justice, as a statement of the law applicable to locations made under the act of 1866, nor was it intended to cover a case involving the question here presented.

Every decision must, of course, be considered in the light of the facts involved therein. The Iron Silver case was one where the location had been made under the act of 1872. Under this act end lines are of vital importance, and, as ruled in that case, must be parallel, or the location loses all extralateral right—that is, the right to follow the vein outside its boundaries.

As we have seen, surface lines were of no importance so far as the lode was concerned under the act of 1866, and as to such locations they only became important after the enactment of the law of 1872.

Next, the learned Justice did not have in mind such a question as we have presented here—that is, whether a side line which crosses a vein is, as to that vein, an end line, as held in the Flagstaff case, but whether the Court

can CREATE new end lines for each of the several veins that may be found within the boundaries of a location.

In that case, the location of the Stone claim had been made in the form of a horseshoe. The vein seems to have run in the same shape, leaving the location at the ends of the horseshoe, which were not parallel. The ledge did not cross the side lines at all, unless the ends of the horseshoe should be treated as side lines, which they clearly were not. The result was that there were no parallel lines that could be treated as end lines.

Under these circumstances it was contended, and was held by Justices Waite and Bradley, that end lines should be projected parallel to each other, and crosswise to the general course of the vein. It was in combating this view that Justice Field used the language quoted, and it will be readily seen that it has no reference to such a case as the one in hand.

Here, no necessity exists for the CREATION of an end line. One has already been created by the acts of the locators. It crosses the vein upon its strike, and as such does and must constitute its end line for many purposes, and it is the only line which crosses or approaches it upon the surface. It fills every definition of an end line that has ever been established by the Courts, and we respectfully submit that every consideration of justice and convenience requires that it should be treated as the end line of the Contact vein.

The Iron Silver case turned entirely upon the want of parallelism in the end lines—the actual end lines of the lode, not those called such, for they were parallel—as

is clearly stated in the following extract from the opinion:

"Under the act of 1866, 14 Stat. 251, parallelism in the end line of a surface location was not required, but where a location has been made since the act of 1872, such parallelism is essential to the existence of any right in the locator or patentee to follow his vein outside of the vertical planes drawn through the side lines. His lateral right by the statute is confined to such portion of the vein as lies between such planes drawn through the end lines and extended in their own direction that is, between parallel vertical planes. It can embrace no other portion. The exterior lines of the Stone claim form a curved figure somewhat in the shape of a horseshoe, and its end lines are not and cannot be made parallel. . . . We are therefore of the opinion that the objection, that by the reason of the surface form of the Stone claim, the defendant could not follow the lode existing therein in its downward course beyond the lines of the claim, was well taken to the offered proof."

So far as ~~this~~^{the} decision of that case is in point here, it is in favor of the appellant, because it again holds and emphasizes the point that the line which the vein actually crosses is the end line, no matter what may be called such.

If a location happens to contain more than one vein,

one crossing through the ends of the location and another crossing a side line, why should there not be end lines established for each?

Take, for illustration Fig. 8, opposite page 14, showing a location with a cross vein pitching as indicated by the arrows, discovered, we will say, subsequent to the original location: Now, apply to this ideal location the principle established by the lower Court, that the end line of the location must constitute an end line of every vein found therein.

The result is that we have a ledge—the cross-ledge “B”—surrounded by end lines. Under all the decisions and the statute it could not be followed upon its strike beyond the side lines C D and E F. Of necessity and admittedly, the side line constitutes an end line to the extent at least of cutting off farther pursuit of the vein beyond that line. Then the section between the side lines passes downward on the dip until it reaches the plane of the end line, D F, and here again its pursuit is stopped.

If there is any principle as applied to ledge mining that may be called the distinctive American principle, it is the right of the miner to follow the ledge upon its dip “THROUGHOUT ITS ENTIRE DEPTH.”

In this illustration we have a case where the right would clearly exist, under the decision in the Flagstaff case and similar cases, if the cross vein were the only vein in the location, although the miner had made a mistake and located crosswise of it instead of lengthwise, but which is to be entirely defeated simply because the orig-

inal end line still remains the end line of the first lode, and the location contains two veins instead of one.

Suppose, after the location had been made, it had been discovered that the vein located upon—Granite Ledge—instead of passing out through the line g-h, passed out as does the Contact vein. Can there be any doubt that the side line f-g (if it be a side line) would become the end line of the lode? There can be but one answer to this.

Why should it not then become the end line of the lode which does cross it, although the line g-h still remains the end line of the Granite lode?

In the case shown on Fig. 8, opposite page 14, what confusion can result from the exercise of the right to follow the cross ledge upon its dip "to its lowest depth"? The right to follow the other would, of course, cease at the end of the location, where upon its strike it crosses the end line, but no more reason can exist why the end line should not be treated as the side line of the cross ledge, and the miner be permitted to follow it between its side-end lines upon its dip outside the end line of the location, than there would be if that were the only vein in the location, as in the Flagstaff case, or the Amy & Silver-smith case.

It will be observed that the contact vein has only been traced

a few hundred feet into the Providence ground. Whether in its course it continues on to the south end of the location, or passes out of one or the other of the side lines, is undetermined, and of no importance.

We are not troubled in this case with the difficulty that has confronted the courts in many of the cases that have arisen upon locations made under the act of 1872—the necessity of maintaining parallel end lines in order to prevent the locator from taking more of the vein beneath the surface than he has upon the surface.

The supposition that this principle also applied to locations under the act of 1866 seems to have been one of the reasons that led the learned Circuit Judge to the conclusion at which he arrived.

(See his opinion in Transcript, pages 90-91.)

But that this is erroneous, and that under that act the locator may obtain more of the vein beneath than upon the surface, if the end lines of his location happen to diverge, and that such a location is perfectly valid, has been so clearly*shown by Mr. Lindley, that in order not to unreasonably extend this brief, we content ourselves with citing his work on Mines, sections 575, 576, 577, 600, and the cases there referred to by him.

It is also said that the cases cited from the Supreme Court of the United States are not in point, because, in all of them where side lines have been held to be end lines, the veins have crossed both side lines of the location.

Whether this is true of the Argentine-Terrible case is at least doubtful, especially in view of the diagram of the locations there in conflict, as given by Mr. Lindley in section 587. According to that, the ledge would only seem to cross one side line of the Adelaide location; nor does the opinion in the case (122 U. S. 478) indicate that it crosses both.

But no matter. Should this fact make any difference?
We believe not.

Would an end line become any less an end line because the vein did not reach the other end line, or because it had not been traced through to the other end, which is all that can be said here?

Mr. Lindley, in his work, section 592, holds that this fact makes no difference, and we agree with him and adopt his reasoning.

See, also, *Del Monte M. Co. v. New York*, 66 Fed. Rep. 212, 215.

Carson City G. & S. Co. v. North Star M. Co., 73 Fed. Rep. 597.

The bounding plane established by both the Circuit Court and the Court of Appeals is entirely impracticable.

As will be noticed by reference to the judgment of the Circuit Court (see Transcript, p. 80), that Court established a bounding line running north 43 degrees east, from "f" to "g" of Fig. 6, and from "g" to "h," a line running north 73 degrees east, thus giving us, to say the least, the unique feature of a crooked bounding plane. While the learned trial judge held that the line g-h was the end line of our location, and that as such it must constitute the end line of all veins found within the claim, no matter in what direction they ran, he sacrificed consistency to justice to the extent of also holding the line f-g a boundary beyond which we have no right to go, nor defendant to come.

But the Court of Appeals modified this judgment by striking out that portion relating to the line f-g, and established the line g-h-h¹, and the plane of that line extended indefinitely, as the only boundary, thus giving us as the dividing line between the two properties, a line that does not run between them at all.

(See opinion, Transcript, page 277.)

The line f-g is the only line between the two mines, and yet by this decree that line is entirely ignored.

Several surprising results follow the establishment of the line g-h, as the only dividing line between the mines. If it is, and f-g is to be entirely ignored, then g-h must bound our rights on the ledge west of "g" as well as east of it. If so, it must be that we are entitled to go to that line where, as extended west, it crosses the apex of the lode in the New Years ground. (See, for illustration, Fig. 6.) If this be true, then we must own a portion of the vein ~~and~~ the New Years ground, which we have never supposed we did. If f-g is to be ignored, and g-h is not to be extended west of "g," then what does constitute a dividing line on the ledge above the point where, on its dip, it reaches vertically beneath "g"?

The Contact vein does not dip under the Champion ground, but extends into it upon its strike. If, then, the plane of the line g-h is the only limit of our right in the vein upon its dip, how and where are we entitled to reach that bounding plane north of the line f-g? How far from the surface must we keep, and upon what inclination along the vein must we descend, to reach it beneath the Champion, in order to keep upon the dip and not upon

the strike of the ledge? It would seem that these questions show how utterly impracticable the line established by the Court of Appeals is.

Suppose a vein should now be found crossing the line f-g, as does the Contact vein, but dipping to the west. If the line g-h is the true bounding plane for the Contact vein, it must also be for the other, and the result would be that the owners of the Providence would own somewhere in the depths several hundred feet upon the strike of this vein north of their boundary line f-g, and until they reach the plane of the line g-h, projected west.

In his Brief in the Court of Appeals, Mr. Lindley used, for illustration, a figure similar to fig. 9, here reproduced, and said, assuming for the argument that the Contact vein crosses the line f-e and passes on through location D, as marked on the diagram, then if f-g constitutes an end line, f-e must also be an end line. He then argued that this was inadmissible, because it would result in diverging end lines that would give the Providence a much greater length of the ledge as it dips into the earth than it has on the surface. In view of the conclusion announced in his treatise on mining law, sections 576-7, 600, that under the act of 1866 a location with diverging end lines is proper, he may not use the argument again, but we produce the figure for another purpose.

We assume, as he did, that the vein crosses the line f-e and passes into D. Now, let us try to apply the principle established by the lower courts in this case, that the lines g-h and a-p are the only end lines of the Providence location, and consequently the end lines of the Contact vein, to the settlement of a controversy as to their rights

FIG. 9.

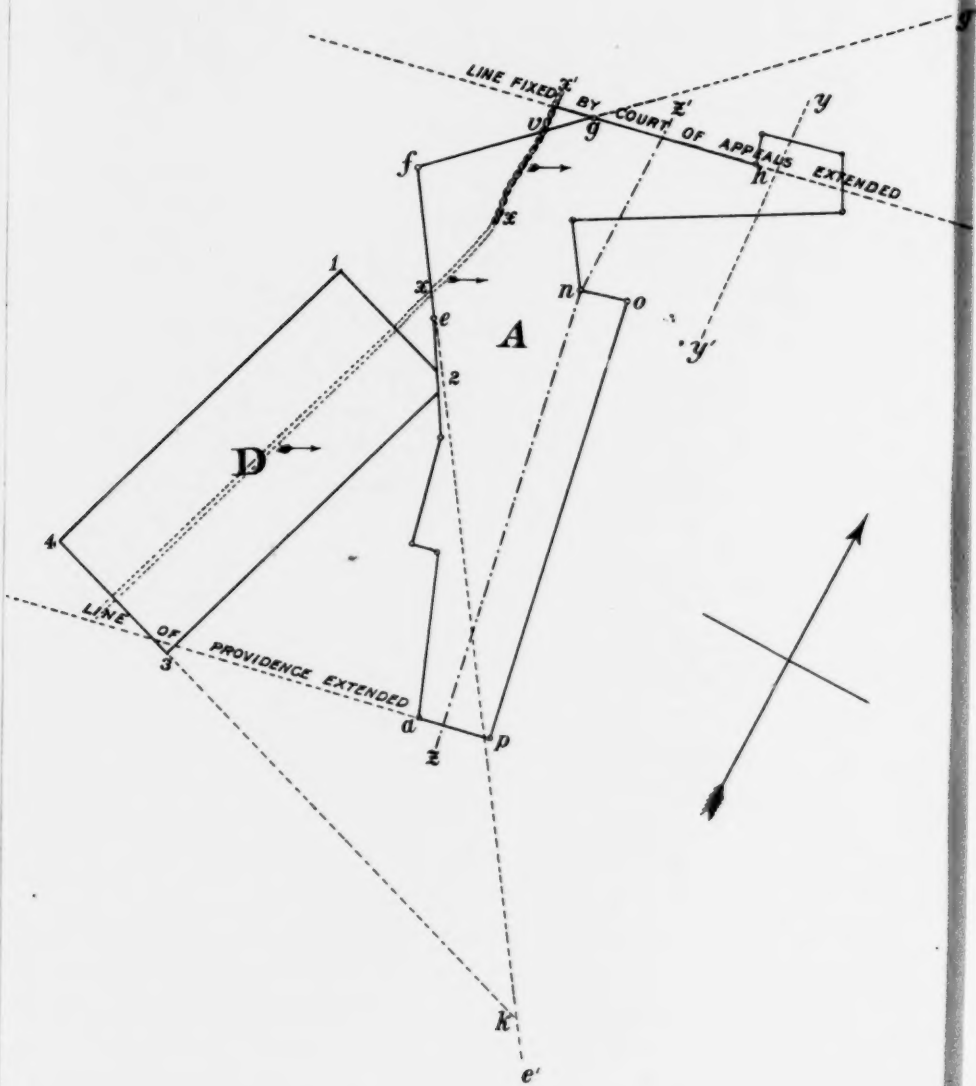
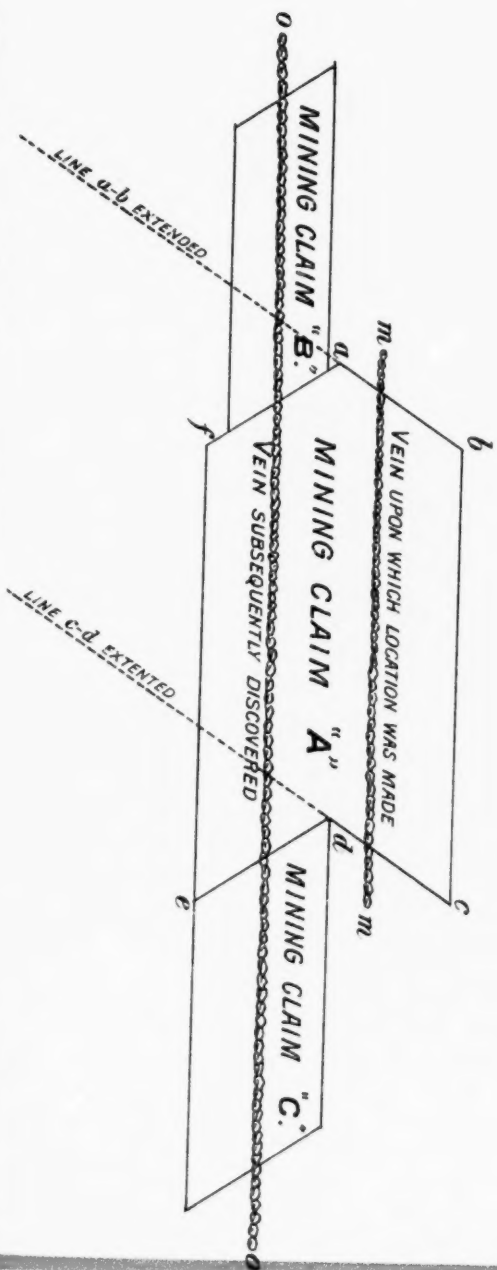


FIG 10.



in that vein between the Providence and location D. Of course it would be an impossibility. In such an imaginary case either f-e is the end line of that vein in the Providence, or there is none that can be applied, for certainly lines g-h and a-p are totally inapplicable.

Take again, the ideal location "A," found in fig. 10, which would be a perfectly correct location under the act of 1866, and try to apply the end lines a-b and c-d of the originally discovered vein, m-m, which, according to the decisions in this case must also constitute the end lines of the subsequently discovered vein, o-o, to the settlement of a controversy between locations A and B, or A and C, as to their rights in vein o-o. A glance at the diagram shows how impracticable it would be.

Any theory that leads to such results cannot possibly be correct. It would seem that these illustrations also demonstrate that the only line that can be held to be an end line is one that runs between two properties and crosses the apex of the vein at the point where it passes from one mining claim to the other; f-g is such a line as this, but g-h is not. F-g must at least divide the surface of the vein between the Providence and New Years. Mr. Lindley says: "Let it be conceded absolutely, that where a vein crosses any line of a location, the crossed line becomes an end line in the sense that it stops the right of pursuit on the course, or strike, of the lode. All Courts agree upon this."

Lindley on Mines, sec. 591, p. 731.

Then, as to this vein, f-g is an end line, and, to fulfill the purposes of an end line, must be drawn downward indefinitely, and it would seem, under the terms of the mining act of 1872, should also be continued in its own direction along the dip of the vein, instead of turning an elbow at "g."

In the Eureka case, 4 Saw. 302, 326, speaking of a similar question, Mr. Justice Field said:

"As the Richmond and the Champion were vein or lode claims, a line dividing them must be extended along the dip of the vein or lode, so far as that goes, or it will not constitute a boundary between them. The lines dividing claims upon veins or lodes necessarily divide all that the location on the surface carries, and would not serve as a boundary between them if such were not the case."

The principle established by the trial Court in this case, of making the line which crosses a vein an end line only for its length, and then turning an elbow, would have required this Court to hold in the Flagstaff, the Argentine-Terrible, and the Amy & Silversmith cases, *supra*, that the side lines there only became the end lines for their length, and then the true end line must turn the corner and follow the original end line of the location into the earth. Wherever, in any other case than this, has such a principle even been suggested, let alone being formulated into a decree?

A line to constitute the end line of a vein must be one of the exterior lines of the location which crosses it upon its apex.

The theory of the law is that a mining location will consist of a quantity of land surrounded by the exterior lines of the location. Within those lines the top or apex of the vein must lie; if not, the vein does not belong to that location. It follows that those lines must necessarily cross the apex, and such crossing lines are then to be extended downward vertically, and horizontally in their own direction, to constitute the end line of the lode. This line was certainly to be one of the exterior lines of the location.

Nothing could have been farther from the thoughts of the framers of the law than that a line situated as is g-h should constitute the end line of a vein which it did not cross until it was hundreds of feet away from the location.

If there can be but one end line of a location, which must constitute the end line of every vein found within that location, then it must be the end line of veins running parallel with it, as well as those running crosswise. This is, of course, a geometrical impossibility, and demonstrates that such could not have been the intention of the lawmakers.

In such a case, no matter what they may be called, the side lines are, and must be, the end lines of the vein, or else it has no end line.

The line g-h is not the end line of the Contact Lode, because it does not cross it. It is not an end line of the Pro-

vidence ledge even, because it runs some thirty feet south from the north end of that ledge. It is not an end line of the parallelogram $h-i-k-h^1$, because the north line of that parallelogram is about one hundred and fifty feet to the northward of it. It is not an end line of the Providence location, because the vein, as located and patented, extends beyond it, and so does the surface ground contained in $h-i-k-h^1$.

If the decision is correct, and the line $g-h-h^1$ is the only end line that can be recognized, and the one that must constitute the end line of every vein discovered within the surface lines of the Providence, then what is the situation of veins within the parallelogram $h-i-k-h^1$?

Suppose a ledge should be discovered running through that parallelogram as represented by the line $y-y^1$, on fig. 9, opposite page 34.

Would it not belong to the patentee of the ground, as one of the ledges granted to him by the act of May 10th, 1872? Its apex would be within the surface lines of the Providence location. By what course of reasoning could it be taken from the owner of that location, north of line $g-h-h^1$ any more than south of it?

To say that the end line of such a vein would be the line $i-k$, would be in conflict with the whole theory upon which the case was decided, which was that there can be but one end line, and that must be the original end line of the location.

The law of cross veins.

We contend that in the cases of *Watervale M. Co. v. Leach* (Arizona), 33 Pac. Rep. 418, and of *Wilhelm v. Silvester*, 101 Cal. 358, the Supreme Courts of those jurisdictions have established principles that are **very** much in point here.

Those were cases involving the title to cross veins—veins passing out through the side lines of the location, and crossing the vein originally located.

In each of them it was held that the locator owned such cross vein to its full extent within the boundaries of his location, and constituted, of course, a virtual holding that the side lines became end lines as to that vein, and consequently, that there can be more than one end line to a location.

In *Wilhelm v. Silvester*, *supra*, referring to Revised Statutes, section 2322, the Court said:

"This language is clear and explicit, and in designating the property rights of locators, it is in nowise ambiguous or uncertain. It expressly, and in language which needs no construction, grants to such locator every ledge or lode the top or apex of which lies within the surface lines of the location; that is, such part of the ledge as lies within such surface lines. And there is no limitation or exception of any such ledge on account of the direction in which it may run. It may be parallel with the originally discovered ledge, or may approach it at right angles, or at an obtuse angle, or at an acute angle; it may intersect it or not, and still it will be clearly within the language of said section."

The language of the Arizona Court is equally clear.

See, also, *Pardee v. Murray*, 4 Mont. 234, and *Lindley on Mines*, sections 559, 560, where the learned author approves of the Arizona and California rule.

THE DEFENDANT'S THEORY OF AN END LINE.

Does the defendant's proposition of creating a new end line at $v-v^1$, figs. 5 and 6, offer any better solution than the one adopted by the Court? We think not.

1. We already have an end line in $f-g$ established by the locators of the Providence, recognized for many years by the parties to this litigation, just, equitable, and legal in all respects. There is no necessity or occasion for the Court to create another.

2. The line $v-v^1$ is based upon the theory of moving the original end line $g-h$ south until it intersects the Contact vein. But as the latter is, as we have seen, in no sense an end line, but merely one of the surface lines, there would be no propriety in doing this.

3. The proposition is based upon the assumptions, first, that the line $g-h$ is the original end line, and, secondly, that there can be no other end line but that for all the veins found within the patented ground—assumptions, as we have seen, entirely without foundation.

If, as the defendant admits, we must move this line in order to make it fit, why not adopt the one already made?

Even if the line $f-g$ is not the end line of the Contact vein, if the Court must adopt or create one, why not adopt the one made by the parties?

4. In the Iron Silver-Elgin case, *supra*, and the Amy & Silversmith case, *supra*, this Court emphatically declined to create new end lines for a locator.

In the latter case (152 U. S. 228) Mr. Justice Field, in delivering the opinion of the Court, said:

"The Court cannot become a locator for the mining claimant, and do for him what he alone should do for himself. . . . It cannot relocate his claims and make new side lines or end lines. Where it finds, as in this case, that what are called side lines are in fact end lines, the Court, in determining his lateral rights, will treat such side lines as end lines and such end lines as side lines; but the Court cannot make a new location for him, and thereby enlarge his rights. He must stand upon his own location, and can take only what it will give him under the law."

5. The line v-v¹ would give the respondent a large portion of the Contact vein within the surface boundaries of the Providence, and would give it a portion of the vein within such boundaries which in its notice of relocation it expressly abandoned. (See statement of the case, pp. 4 and 5 of this Brief, and figs. 3, 4, and 6.)

BY AGREEMENT, BY ACQUIESCENCE, AND BY ESTOPPEL THE LINE F-G HAS BECOME THE END LINE BETWEEN THE TWO CLAIMS.

By all or either of these modes a boundary line may be fixed between two properties by parol.

4 Am. & Eng. Ency. of Law (second ed.), 859.

There was a dispute between the Champion Mining Company and the Providence Mining Company as to the end line between the New Years Extension and the Providence claim on the Contact Vein.

It is true the Providence location was established by patent, but that did not prevent the Champion Mining Company from disputing said line, or from making a location covering a considerable portion of the Contact Vein on the surface ground south of the line f-g. (See fig. 3.)

That the parties may dispute a line of patented ground we think is beyond question, because by disputing, taking into possession, and holding adversely for the period prescribed by the Statute of Limitation, they would acquire a better right than the patentee.

But the owners of the Providence objected to such an invasion of their claim. Thereupon, the Champion Mining Company, through its Board of Directors, authorized John Vincent, its Superintendent, and Edward Lynch, its attorney, to make for the company a relocation of the claim, so as not to conflict with the Providence location. (Trans., pp. 175-176.) Lynch drew the notice of relocation, which appears in the Transcript, pages 30-33, and delivered it to Vincent. The notice of relocation purports on its face to have been made for the company. Vincent posted the notice and made the relocation, started the Champion shaft so as to conform with the north boundary of the Providence location running south, 43 degrees west, so that it never could cross that line or its prolongation.

In that notice of relocation the south end of the lode line is fixed in the following manner:

"Commencing at a point on the northerly bank of Deer creek; which point is 60 feet south, 11 degrees 45 minutes east, of the mouth of the New Years Tunnel, and "running thence along the line of lode towards the north-east corner of the Providence mill, about south, 46 degrees 15 minutes east, 200 feet more or less, to a point "and stake on the northerly line of the Providence Mine. "patented, designated as Mineral Lot No. 40, for the "south end of said lode line." (Trans., p. 31.)

And also by the following language:

"And whereas, part of this claim as originally described, and as hereby relocated, conflicts with the rights "granted by the letters patent of said Providence Mine, "said Lot No. 40, now, therefore, so much of this claim. "both for lode and surface ground, as originally conflicted or now conflicts with any portion of the surface or "lode claims or rights granted by said patent is and are "hereby abandoned, which portion of this claim so abandoned is described as follows, to-wit: All that portion "of the above described New Years Extension Claim "for surface and lode which lies south of the northern "boundary line of said Providence Mine, which runs "north 43 degrees 10 minutes east, across the southeastern corner of this claim." (Trans., p. 32, and fig. 4.)

The said last mentioned line is the same as f-g, because it appears in all the diagrams that the line f-g is the only line which crosses the corner of the original location of the New Years Extension, which is the southeast cor-

ner of the New Years Extension as originally located and by this notice of relocation abandoned.

The defendants, in their petition for removal from the State to the Circuit Court, claimed title under said notice of relocation. (Trans., 23, 31, 33; testimony of Vincent, Trans., p. 154.)

All of said facts were reported to the directors, while in session, and also the object and purpose of giving the shaft its direction, viz., to avoid any conflict with or crossing of said line f-g. (Trans., pp. 154-155.)

How can a corporation bind itself if the Champion Mining Company did not do so by the resolution authorizing Vincent and Lynch to use their discretion in fixing the lines of the New Years Extension and of all their mining property, and in authorizing Vincent to use his own discretion in regard to the work to be prosecuted on the claim, a part of the work being the sinking of a shaft which was afterward sunk by Vincent some forty feet in depth? (Trans., p. 154.)

A report was made to the Board of Directors of the work which he had done—which, of course, included the relocation of the claim—why he had done it, and why he had started the shaft in that direction, namely, so that it could never interfere with the line f-g as established by the relocation, and it was ratified by the acts of the company thereafter in continuing the shaft down to the 1000-foot level. None of the drifts were extended across the plane of the line f-g except the 800, 900, and 1000-foot levels. The first level to run through the line was the 1000-foot level, where rich ore was found, and then the appellee returned to the 800 and 900-foot levels to reach

the rich ore found on the 1,000-foot level, and the 1,000-foot level was not driven through the line f-g until about three months before the commencement of this action, and that trespass was the cause of this suit. (See fig. 5.)

The statements of Vincent were binding upon the corporation, because he was clothed with all of the power that the corporation could give him respecting the matter in dispute between the two companies, so far as the boundaries of the New Years Extension were concerned, and the statements of Vincent were made while he was performing the work which he was authorized to perform by the corporation, namely, in sinking the shaft.

Such a conversation was part of the *res gestae*; the declarations were made within the scope of his agency and authority from the corporation, and were reported to the corporation. (See Vincent's Testimony, Trans., p. 154.)

An agent clothed with power and authority, as Vincent was, while engaged in the act, may state the purpose of the act, and such statement becomes a part of the *res gestae*, and is binding upon the principal.

1 Greenleaf on Evidence (14th ed.), sec. 113.

Green v. Ophir C. S. & G. M. Co., 45 Cal. 522.

Tait v. Hall, 71 Cal. 150.

These proceedings and the notice of relocation show in express terms that there was a conflict between the appellant and the appellee as to the south end line of the New Years Extension and as to the north end line of the Providence location.

That the parties had the right and the power to agree upon the boundary line will not be disputed.

They had a right to adjust any dispute as to side lines or end lines.

The line f-g was recognized as the boundary line between the two companies and that it was in fact such is not disputed. It was acquiesced in for more than nine years and until about three months before the commencement of the suit.

Acting upon the theory that the line f-g, extended, was the true boundary, the Providence Company sank its shaft and by means of crosscuts and drifts therefrom made valuable improvements upon the ground in dispute for the purpose of exploring, opening up and working it. (See Fig. 5.)

The Circuit Court recognized the agreement, but held that it did not give complainant any right to extend that line as a boundary line any further than to point "g."

There is no difference between an agreement concerning an end line and one concerning any other boundary line. An agreement concerning an end line of a location confers upon the parties to the agreement all that an end line implies. When an end line is agreed upon it means that it shall be the measure of the extralateral right, and when used for that purpose, it shall be continued in its own direction.

The parties to the agreement were presumed to understand the law as laid down in section 2322, and to have made their agreement concerning the end lines under the light of that law, and with the view of conferring upon each the right which that law gives.

Under that law the end line must be continued in its own direction. It is to serve as the measure of the rights

of the parties in the Contact Lode, and it could not serve that purpose unless continued in its own direction. As was said by the Court in the Eureka case, 4 Sawy. 326: "All lines dividing claims upon veins or lodes necessarily "divide all that the location on the surface carries, and "would not serve as a boundary between them if such "were not the case."

In that agreement the parties acquiesced for more than nine years. If there had been no agreement but mere acquiescence for such a length of time, the Statute of Limitations precluded either from asserting that it was not the true line.

Sneed v. Osborn, 25 Cal. 619, 630-631.

Blair v. Smith, 16 Mo. 273.

Shields v. Titus, 46 Ohio, 528.

Gwynn v. Schwartz, 9 S. E. Rep. (W. Va.) 880.

In Atchison v. Pease, 96 Mo. 566, there was a dispute between two proprietors of adjacent lands as to the boundary line. The contending proprietors went upon the land and agreed verbally upon a boundary, and the fence which then stood between them was moved to such agreed boundary. Held, that the agreement was binding upon the parties and those claiming under them, and that the agreement was not within the Statute of Frauds.

In Fisher v. Beunehoff, 121 Ill. 426, Fisher and Means had a line running between their respective lands, which line was recognized, and fences built to it, and timber cut on the faith of it for thirty-five years. Held, that both parties were estopped from asserting that it was not the true division line.

In *Helm v. Wilson*, 76 Cal. 476, it was held that a dispute was not even necessary to sustain an oral agreement as to a boundary line. "Where it has been proved that a line has been agreed upon or acquiesced in, it will not be disturbed."

Truett v. Adams, 66 Cal. 223.

White v. Spreckels, 75 Cal. 610.

The mere acquiescence in a line as a dividing line between adjoining properties for fifteen years, although but one of the proprietors, and perhaps neither, is in actual possession, is sufficient to establish that line as the true line, if known and claimed by both proprietors.

Brown v. Edson, 23 Vt. 435, 450-451.

In *McCormick v. Barnum*, 10 Wend. 105-109 and 110, it was held that where parties either agree, or for a long period of time acquiesce, in a division line, such line will not be disturbed. Even when a surveyor has mistakenly established a division line, the parties will be concluded if it be acquiesced in for a long period of time, and especially if the period of time has continued for the period of statutory limitation.

In *Doolittle v. Bailey*, 52 N. W. Rep. (Ia.) 337, 338, the parties treated a certain corner as the true government corner, and acquiesced in it for a period of about ten years, and planted hedges, built fences and laid out a highway in conformity therewith. Held, that the corner so acquiesced in would not be disturbed.

Pickett v. Nelson, 71 Wis. 542-46.

The certificate of purchase of the New Years Extension did not constitute a new title sufficient to avoid the end line agreement and the subsequent acquiescence in that line.

First, the acquiescence continued after that certificate was issued, as well as before, and acting upon it the Providence Company incurred the expense of prospecting the ground in dispute, and

Secondly, by location the Champion Company had been the owner of the ground since 1877. It had been the owner, both legal and equitable, and could have maintained any action, either at law or in equity, for any invasion of its rights therein just as well before the certificate issued as afterwards. The certificate was but the confirmation of that title instead of the grant of a new one.

Belk v. Meagher, 104 U. S. 279.

Gwillam v. Donnellan, 115 U. S. 45.

Lindley on Mines, secs. 539, 542.

In Sheldon v. Perkins, 37 Vt. 548, the Court held (quoting from the syllabus): "While one is in possession of land in his own right as owner, he is to be regarded as owner, though he do not possess the legal title, and his acquiescence in a boundary line is as binding as though the legal title had been conveyed to him."

CONCLUSION.

We therefore contend that the judgment of the Court of Appeals is erroneous because:

First. It takes from the appellant that portion of the Contact ledge within the boundaries of the parallelogram $h-i-k-h^1$.

Secondly, (a). It establishes the line $g-h-h^1$ —an impossible line—as the end line of the Contact vein.

b. It fails to establish the line $f-g-g^1$ as the true end line and bounding plane of the Contact vein.

c. It fails to establish the line $f-g-g^1$ as the boundary agreed upon by the owners of the two mines, and acquiesced in by them for many years.

LINDLEY ON MINES.

We have cited and quoted Mr. Lindley's work on mines quite liberally in the foregoing pages. We have found it a clear and generally accurate presentation of the law governing the location and ownership of mining property, and we do not hesitate to pronounce it the ablest work on that subject yet produced, and one that will remain a standard for many years to come.

At the same time we think it only just to ourselves to say that there are other sections of the books that we have not cited, and that we do not admit to state the law as applied to a case like the one at bar.

Mr. Lindley has been an attorney in this case from the commencement, in 1893. By his eloquence and skill as

an attorney he has induced the Circuit Court and Court of Appeals to render the decisions they have in this case, and now as an author he cites those cases as establishing the law to that effect.

This is entirely legitimate, because until reversed, they certainly do establish it, but as this appeal is taken for the very purpose of endeavoring to obtain that reversal, we naturally cannot agree that Mr. Lindley's statements of the law founded upon them are correct.

We respectfully submit that the decree of the Circuit Court of Appeals and that of the Circuit Court should be reversed.

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SUPREME COURT OF THE UNITED STATES

AUSTIN WALRATH,

Appellant,

VS.

CHAMPION GOLD MINING CO.,

Appellee.

APPELLANT'S REPLY BRIEF.

JAMES F. SMITH,
DANIEL TITUS,
R. R. BIGELOW,

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APPELLANT'S REPLY BRIEF.

The Act of Congress of May 10th, 1872, granting to the locator of mining locations theretofore made all veins apexing within the surface lines of their locations, is, so far as this controversy is concerned, to be construed the same as though the grant had been made solely and individually to the Providence Company.

By the terms of the grant, the grantees were to have the exclusive right to the possession and enjoyment of all veins apexing within their surface lines, and of all such outside parts of such veins as lie between vertical

planes drawn downward "through the end lines of their location" extended in their own direction.

The appellee's whole case rests upon the meaning of that last phrase.

We must bear in mind that the many sided location of the Providence was entirely valid under the law of 1866. We must also suppose that Congress knew of the form of the location then owned under the Providence patent, and knew, also, that it was possible that other veins than the Granite would be thereafter discovered running in different directions and crossing other lines than did the Granite. Then, to support the appellee's contention, it must be held that, under all these circumstances, when Congress used that phrase "end lines of their locations" it meant the lines g-h and a-p, and those lines alone.

It is impossible to believe that such is the case. In so large a location—containing over thirty-three acres—it was not only possible, but probable, that other veins would be found running in other directions than the Granite, and that would neither cross such lines nor even touch their vertical planes anywhere, and where it would be impossible that they should constitute end lines.

Again, as shown in our original brief (page 24), this Court has held, time and again, that that phrase does not refer to any particular surface line of the location, but to the line that subsequent development shows the vein actually crosses. Here it is found that the Contact vein actually crosses the line f-g, and consequently that line, as to that vein, becomes the end line of the location.

Appellee's learned counsel argues (appellee's brief, page 12), that we have misunderstood the decision of the Circuit Court of Appeals, and that said Court did not intend that the line g-h should also be extended west of g as well as east of it.

If it did not we are entirely unable to understand the meaning of the language used. The Court first said: "In so far as the decree appealed from limits the extralateral right of the complainant to follow the vein called, in the record, the Back or Contact vein, in its downward course by the line f-g, running South, 43 degrees west, extended vertically downward, it is erroneous and should be modified. The Court below correctly found and adjudged the end lines of the Providence claim, under which the complainant claims, to be the lines a-p and g-h; and, further that they are the *true and only end lines of each and every vein, lode, or ledge found within the surface location of the Providence claim.*

Certainly the trial Court did not attempt to limit any extralateral right of the complainant by the line f-g, except that between where the line crossed the apex of the vein and g, and as showing that this was what the Court had in mind, it added: "It should be bounded by vertical planes drawn downward through the end line g-h, running south 73 degrees west, and through the end line a-p, extended indefinitely in their own direction, *subject to the condition that the complainant has no right to enter upon the surface of the respondent's claims.*"

As respondent's claims do not extend east of g, this language must refer to the surface of its claim imme-

diately across the line f-g, and west of g. But if complainant was not to cross the vertical plane of the line f-g at all, nor go into respondent's claim anywhere, why provide he should not enter upon the surface? We submit that the only construction that can be placed upon this language is that the line g-h was to bound complainant's extralateral rights in the vein beneath the surface of the New Year's claim west of g, and that consequently we have not misconstrued the decision of that learned Court.

We feel the more sure of this because the principle upon which it is based, that the lines g-h and a-p are the only end lines of the location, leads inevitably to the conclusion that such must have been the intention.

In seeking to show our misinterpretation, counsel also says that it was in the light of the geological fact existing in the case, that the vein dips away from the line f-g. that g-h was fixed as the only end line of that end of the location.

He certainly does not mean that the geological facts existing in this case justify the establishment of the general principle that the same line must constitute the end line of every vein found within the location, while a different geological condition would not; that this principle applies to the Contact vein, while if it dipped in some other direction, or crossed some other line, it would not?

Congress, in using the term "end lines of their location" either meant the line called the end line of the location, no matter in what direction the vein in controversy might run or dip, or else it meant the line actually crossed by that vein.

It certainly was not intended to have one meaning in one case, and a different meaning in another case.

If in this case it meant the line g-h, then that line became the end line, no matter what the geological condition might subsequently be found to be, but, as it is utterly absurd to suppose that line could have been the one intended, under some conditions shown and illustrated in our original brief, page 32, et seq., it follows that such could not have been the intention in any case where the subsequently discovered vein did not cross that line.

Counsel says (page 12), "Should the vein on its downward course by some freak of Nature change and dip in an opposite direction, the modification might become effective, otherwise it is a mere abstraction."

That is, should it make this turn, the line g-h would apply where, on its dip, it passed under the New Year's Extension location, 1500 or 2000 feet beneath the surface, but that it would not apply to the surface, nor anywhere above where the vein first passed under g. Now, we are not contending that it would, or that it should, because we believe it should not, but that f-g should be held to be the only end line both at the surface and below, but we do say that if it applies at all, and g-h is the only end line to that end of the Contact vein, then it should be the end line above g as well as below, and that it should be extended west from g across the apex. As this is manifestly inadmissible, it shows that g-h is not, anywhere, the "end line of their location" as to the Contact vein.

Counsel also says that under the decisions the line f-g performs merely the function of a side line. What are the functions of a side line which crosses a vein? To this query he answers, on page 23, that such a line performs the function of an end line to the extent of stopping farther pursuit of the vein on its strike. He calls f-g a side line, but he admits that to some extent it constitutes an end line of the Contact vein. This is correct, and we add it constitutes an end line, not only as to the surface, but is certainly, under the terms of the law, to be extended downward vertically. Counsel must also admit this. In fact, he contends that it does constitute an end line of this vein as far as g. Where the vein passes under g, we will say, it has reached a depth of 300 feet. Then for 300 feet on the dip of the ledge f-g is not a side line, but a true end line. This is not in accordance with the decision of the Court of Appeals, but is admitted by counsel, and we believe is correct.

But at g counsel stops. The statute provides that the end line is to be extended indefinitely in its own direction, but counsel says only until it reaches g-h (which we contend is merely a side line of the vein), and there he makes an angle of about thirty degrees.

It seems to us that this position is unquestionably untenable. If it becomes an end line at all, it is, under the law, to be extended indefinitely in its own direction, and to divide outside parts of the vein as well as inside parts.

We respectfully call attention to the fact that counsel did not originally admit that f-g constituted an end line

for any purpose. His original contention was, that there should be a new end line drawn through v-v' (see page 10 of his brief), but the decision in *King vs. Amy & Silversmith*, 152 U. S. 228, that the courts could not create an end line for a locator, was fatal to this contention, and he has fallen back upon a defense of the position taken by the Courts below, that g-h is the only end line, which as it seems to us, is not near as logical nor as tenable as is his own. Even yet he occasionally relapses towards his original position. (See bottom of page 36 and page 37 of his brief, where he still contends that instead of treating the side line as an end line, where the vein crosses it, a new end line should be drawn by the "application at the point of departure from the side line of the plane of the end line of the location." This, of course would be v-v'.)

Suppose it had been found, after the passage of the Act of 1872, that the Granite vein did not cross g-h, but either stopped short of that line, or turned and crossed f-g. We suppose counsel would not argue that g-h would still remain the only end line of the location. Under the *Flagstaff* and other cases it would not in such case be the end line of any vein, much less of the *Contact*; but if, in the Act of 1872, Congress referred to that line when it spoke of the "end lines of their location," then it would remain the line intended without regard to the subsequently discovered course of the vein.

Again, suppose that g-h, instead of running from g to h had been located nearly south from g to o—substantially parallel with the *Contact*—and crossing the Granite vein between those points. It would then be as

much the end line of the Granite as it is now. Would it still remain the end line of the Contact? Would the Champion be entitled, under its location, to all the ore lying east of that line? Most certainly not, and if it would not in that case, then it is not now. As to the Contact vein, g-h would then be no more a side line than it is now. The only function that it now performs as to that vein is that of a side line, and a side line never stops the pursuit of the vein on its dip.

On page 24, counsel quotes from the opinion of the Circuit Court as follows: "Complainant's contention would take the back or Contact vein outside of the plane of the northerly end line of the Providence drawn downward vertically, and give to him extralateral rights not granted by the patent, nor given to him by the granting provisions of the Act of 1872."

We submit that this statement begs the whole question in dispute. If f-g is the end line of the Contact, then, and, as to that vein, g-h, is not the end line of the Providence location, but it becomes as to that vein merely a side line, and our contention does not "take the vein outside the end line, nor give us extralateral rights not granted by the patent, nor given by the Act of 1872."

Counsel argues (pages 25 and 26), that in extending the lines g-h and a-p westward, in our Figure 9, page 34, we misinterpret the decree of the Court below, because that Court did not intend these lines to be extended west. We have already answered that proposition, but, in regard to Figure 9, we wish to say that it was drawn simply to illustrate the argument that the doctrine that lines g-h and a-p constitute the only end lines of the

Providence location, and consequently the end line of every vein found crossing any of its lines, is entirely untenable.

While, owing to the fact that the Contact vein happens to dip to the east, there are, and can be, no portions of it on its downward course to the west of the Providence, that fact is entirely immaterial. It might have dipped to the west, but if the principle that g-h and a-p are the only end lines of the Providence location is correct then those lines must be made to apply to every situation that might exist, including the imaginary one illustrated in Figure 9, where the Contact vein is supposed to dip, just as it really does, to the east. We regret that counsel has not given us his ideas as to the proper solutions of the problems presented in our Figures 9 and 10, and on pages 33-35, of our first brief, under his theory that g-h and a-p are the only end lines.

In this connection we wish to add that as a matter of fact the Contact vein does not cross the line f-e at all, although, so far as the evidence showed at the time of the trial, it had only been traced as far south as x, leaving the presumption in force that it extended on through the location.

Lindley on Mines, sec. 615.

The assumption in figure 9 that it did cross that line was made only for the argument.

Counsel is mistaken in saying that we cite the cross-lode cases of *Wilhelm vs. Silvester*, 101 Cal. 358, and *Watervale vs. Leach*, 33 Pac. Rep. 418, as to that portion of the vein lying beneath the parallelogram h-i-k-h.' We cited them to refute his argument that there can be but

one end line to a location, no matter how many veins may be found therein, or in what direction they run. (See our opening brief, page 39.) And for that purpose we claim them to be very much in point. In those cases it was held, notwithstanding the location already had one vein running lengthwise of the location, with, of course, an end line for each end of that vein, that the location would also hold the cross vein. Veins do not run upon the surface of the earth, but beneath the surface, and as the holding was that the location held all of the vein within its surface lines, those lines were necessarily to be extended vertically downward, and hence, as to the cross vein, the side lines constituted true end lines.

That is all we contend for here, for, admitting f-g to be a side line, the same principle would make it, as to the vein which crosses it, an end line, and, if an end line at all, it is, by the express terms of the law, to be extended indefinitely in its own direction along the dip of the vein. It does not seem to us that the fact that there was also in those cases a surface conflict is at all material.

The Parallelogram H-I-K-H'.

We have not been able to exactly understand what claim appellee's learned counsel makes as to the segment of the vein underlying the parallelogram h-i-k-h'. He says (page 35) that the segment is a part of the vein on its strike, and not on its dip. We submit, however, that is dip except what lies precisely at right angles with the surface is not the case, unless it should be held that nothing

strike, which is manifestly not the case. We have treated this question to some extent in our opening brief (page 14), and we also refer to Lindley on Mines, sections 365 and 589, page 719.

There is often a difficulty in determining what is strike and what is dip upon a ledge, but certainly any place on a ledge which comes nearer being perpendicular than horizontal, from a given point on the apex, must be held to be upon its dip. This is the case with the parallelogram in question considered from the point v, where the vein crosses the line f-g at the surface, and consequently it is upon the dip instead of the strike of the ledge.

But whether the ore in the parallelogram is upon strike or dip is immaterial. The law gives the locator absolutely, without regard to end lines or end line planes, or strike or dip, all of every ledge found within his surface lines which also apexes therein.

Counsel also says that his understanding of the rule applicable to our case is presented in section 610 of Lindley on Mines, but turning to that section, we find that the principles there asserted are only applicable to locations made under the Act of 1872, where end lines must be parallel. His illustrations also show that section 610 is based entirely upon the theory of parallelism of end lines. But under the Act of 1866, end lines were not required to be parallel, and the fact that they diverged does not affect the validity of the location. We therefore contend that the doctrine asserted in section 610, whether good or bad, has no application to the case at bar.

We also desire in this connection to call attention to the fact that the New Year's Extension claim has no extralateral rights, because the end lines of the location are not parallel. This is, perhaps, not a very important consideration as to that part of the vein outside the Providence surface lines, because a recovery of that depends upon our own title and not upon appellee's want of title, but, as to this parallelogram, it is quite important, for the reason that this, being within our surface lines, is presumed to belong to us (Lindley on Mines, secs. 551 and 866), and to overcome this prima facie case the appellee must show an apex within his lines and a right to follow the vein into our ground.

We say the end lines of the New Year's Extension are not parallel because the south end line as relocated, is not straight, but makes a turn at or near the point where it crosses the vein. We say this without regard to whether the vein crosses east or west of the point where the turn is made, for we believe that is immaterial.

But, if it makes any difference, then it appears quite clearly from the notice of relocation (see Transcript, page 31) that it was the line f-g that was to constitute the south end of the New Year's Extensions (and not the other line. The notice reads that the location was to begin at the northerly end of the lode in the New Year's Extension ground, and run thence along the lode south "to a point and stake on the northerly line of the Providence Mine, designated as Mineral Lot No. 40, for the South end of said lode line."

And again, the portion abandoned by the same notice of relocation is described as being all that portion "for

surface and lode which lies south of the northern boundary line of said Providence mine"; thus again making f-g the south end line of both lode and surface ground.

As originally located, as shown by Figure 3, that line was straight, and parallel with the other end line, but as that part of it after it crossed the line f-g was on the Providence patented ground, where it had no possible right, it was the same as no line, and at any rate, there is no question that under the relocation, under which appellee now claims its rights, it is not straight nor parallel with the other end line.

The location and patent of the New Year's Extension having been made under the law of 1872, it was absolutely necessary to the existence of rights in a vein outside the surface lines of the location that the end lines should be parallel.

The Iron Silver-Elgin Case, 118 U. S. 196;

See also Lindley on Mines, sec. 365, pp. 475-6, where the cases are cited and illustrated.

Under these circumstances, giving the ore within this parallelogram to the appellee is equivalent to holding that, as against the veriest trespasser, we have no right to the ore found within our surface lines, because we do not own a particular part of the apex of the vein. As against one entirely without title it should make no difference whether we have any apex at all.

Lindley on Mines, sec. 551.

As to this intralimital right the form or shape of our surface location is altogether immaterial.

Id., sec. 553.

We desire also to again emphasize the point that the

question involved here is altogether different from that involved in the case of Del Monte M. & M. Co. vs. The Last Chance, now pending on appeal in this Court from the Eighth Circuit, where, in a location made under the Act of 1872, the vein crosses an end line and a side line of the location.

In Lindley on Mines, sec. 575, it is said that the fact that end lines of a lode diverge in a location made under the Act of 1866, and that consequently the locators will get more of the lode beneath than upon the surface, does not affect the validity of the location, but upon page 38 of his brief he attempts to qualify this statement by saying that it will only apply to the "original" end lines.

Why, if the vein happens to cross the location, as in the Flagstaff case, the same rule should not apply to the new end lines, if they diverge, he does not explain and we can see no reason for any difference.

He also calls attention to the modesty of our claim, under the rule stated in that section, if the vein happened to cross the line f-e. If lines diverge at all, the farther you follow them into the earth the more space will exist between them, but if a small divergence will not affect the validity of a location, we do not see why a greater one should do so. The principle is the same in either case.

Respectfully submitted,

JAMES F. SMITH,
DANIEL TITUS,
R. R. BIGELOW,
Solicitors for Complainant.

No. 230.

MAR 26 1898
JAMES H. McKENNEY
CL

Brief of Lindley for Appellee

Filed Nov. 26, 1898,
IN THE SUPREME COURT OF THE UNITED STATES

AUSTIN WALRATH,

Appellant,

vs.

CHAMPION GOLD MINING COMPANY,

Appellee.

Brief for Appellee.

CURTIS H. LINDLEY,
LINDLEY & EICKHOFF,

Solicitors for Appellee.

IN THE SUPREME COURT

OF THE

UNITED STATES.

AUSTIN WALRATH,

Appellant,

vs.

CHAMPION GOLD MINING
COMPANY,

Appellee.

History of the Case.

The action was originally commenced by filing a complaint in the Superior Court of Nevada County, California, by the appellant herein, whereby he sought to recover from the appellee the sum of \$300,000, as damages caused by a trespass alleged to have been committed by the appellee upon the mining property familiarly called the "Providence Mine," belong-

ing to appellant and his co-owners. Coupled with the demand for damages was a prayer for equitable relief of injunction against future threatened trespasses. The case was removed to the United States Circuit Court, Ninth Circuit, Northern District of California, upon the application of appellee, on the ground that Federal questions were necessarily involved in the determination of the case upon its merits. When the record was filed in the Federal Court, appellant filed repleaders, proceeding by amended bill on the equity side of the court for the purpose of obtaining injunction, *pendente lite*, and perpetual (trans., p. 46), and on the law side by amended complaint to recover the alleged damages.

The equity case alone was tried. The answer of the appellee filed to the amended bill (trans., p. 57) admitted generally the ownership of the appellant and his cotenants of the Providence Mine, but in effect denied entry upon any portion of that mine. Were it not for the nature of the equitable relief sought, the pleadings of the parties and the record before this Court might be said to characterize the case as an action of trespass to try title to an underground segment of a ledge of rock in place carrying gold and silver, which ledge has its apex within the lands of both parties, passing on its strike or onward course out of the surface boundaries of the one into those of the other. In other words, the controversy is between two mining proprietors upon the same vein or ledge, and the question to be determined by the trial court

was, *By what vertical bounding planes are the respective rights of the parties to be limited and defined?*

The trial court declined to adopt the views of either party, but entered a decree establishing a bounding plane independently of their several contentions. From this decree appellant prosecuted an appeal to the Circuit Court of Appeals, Ninth Circuit. The appellate court, in its decision on the appeal (trans., p. 277), directed a modification of the decree of the court below, and, as thus modified, affirmed it.

The scope of the decree of the trial court and the extent to which it was ordered modified by the Circuit Court of Appeals will be fully considered after the facts shall have been outlined.

The present appeal brings up the entire record, and seeks to review the judgment of the Circuit Court of Appeals, modifying and as modified, affirming the decree of the trial court.

The relative situation of the properties of the parties litigating, their respective contentions, and the views of the trial court and Circuit Court of Appeals will be fully represented by the aid of diagrams, lettered uniformly to correspond generally with the exhibits used at the trial and with the small plat forming a part of the opinion of the trial court, reproduced opposite page 84 of the transcript on appeal.

Statement of Facts.—Title of Appellant.

The essential facts of this case are so clearly stated in the opinion of the learned judge who tried the cause (trans., pp. 82-93) that further elaboration seems quite unnecessary. Yet for the purpose of logically presenting the appellee's views upon the law to be considered, a brief statement of these facts as shown by the record, and concerning which there is no controversy, is convenient if not important.

The title of appellant to the "Providence Mine" rests primarily upon a mineral patent issued by the Government of the United States under the Act of July 26, 1866, and the additional rights conferred upon the holders of that class of patents by the Act of May 10, 1872. The patent is printed in full in the transcript (pp. 250-255).

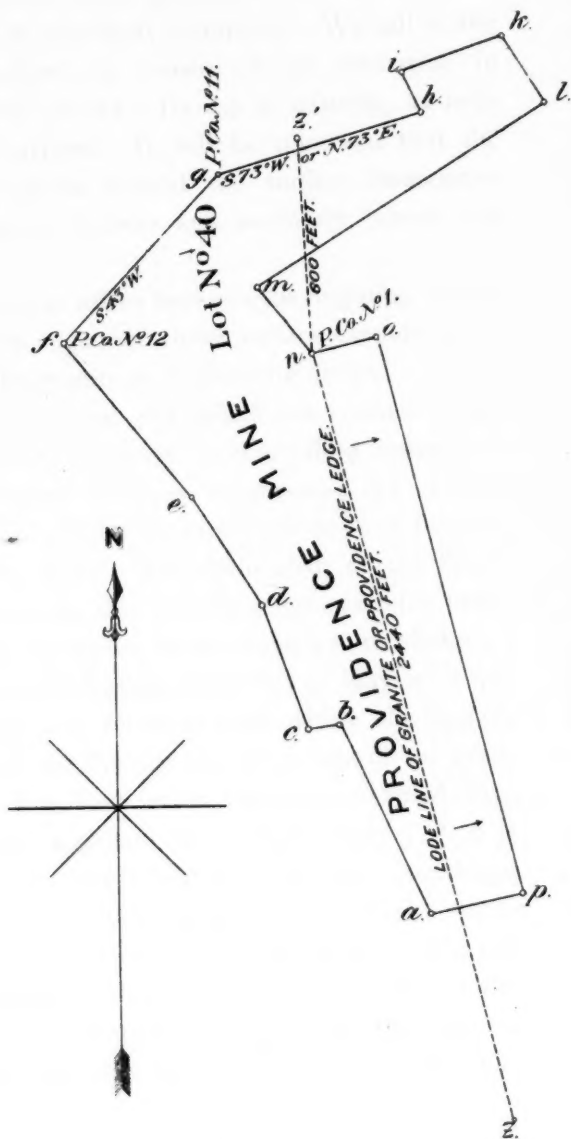
It purports to grant the Providence ledge, vein, or lode in its entire width, for the distance of 3100 linear feet, along the course thereof, together with the surface ground described by metes and bounds.

Accompanying the patent, and forming a part of it, is a map or plat, the essential features of which we herewith reproduce, designated as Fig. 1, inserted opposite this page.

This figure represents the Providence "location" as patented, and the lines *a b c d e f g h i k l m n o p* are the *lines* of such location described in the patent.

The lode or ledge *z-z'*, traversing the location in a northerly and southerly direction, is the lode or ledge

FIG. 1.



Statement of Facts. - [Title of appellant.]



described in the patent as the "Providence Ledge," and it is the only ledge granted by the Government at that time to appellant's grantors. We call it the "Granite Ledge" by reason of the formation in which the vein occurs. Its dip is easterly, as indicated by the arrows. It will be observed that the lode line projects beyond the surface boundaries northerly (about 30 feet) and southerly (about 670 feet).

No controversy arises between the litigating parties with reference to either these surface boundaries as such, or to the granite or Providence ledge.

The lines *a-p* and *g-h*, which are crossed by this ledge, are factors, however, of controlling importance, to be considered later on. Otherwise we are not interested in *this* ledge or its pursuit beyond the surface boundary lines. The main shaft of the Providence is sunk on this granite ledge, and for many years mining operations were confined to this ledge.

Long after the passage of the Act of May 10, 1872, another ledge was found to exist within the surface boundaries of the Providence, lying west of the granite ledge, and for that reason called by the Providence Company and appellant the "Back Ledge." It is called also the "Ural Ledge," from the fact that it traverses property lying some distance to the northwest, formerly known as the "Ural Mine." We call it the "Contact Ledge," for the reason that it lies between two formations—granite on the east or hanging wall, and slate on the west or foot wall. The

relative position of this ledge with reference to the granite ledge is shown on the diagram designated as Figure 2, inserted opposite this page.

This back or contact ledge, marked on the diagram (figure 2) $x'-x''$, crosses on its southerly onward course the Providence boundary line $f-g$ at the point v . Its continuous course southerly is definitely established as far as the point x' . Beyond that point its course is a controverted question, although of no overshadowing importance. The course of the line $f-g$ is S. 43° W., or N. 43° E.

This back or contact ledge, so far as it has been developed within the Providence lines, is admitted to be practically parallel to the granite ledge, and, so far as known, they descend into the earth on practically parallel planes (trans., p. 133).

Figure 3, inserted following figure 2, opposite this page, is a vertical section drawn through the Providence shaft, and will illustrate the relative position of the two ledges as they descend into the earth.

The Providence has reached the contact or back ledge by means of two crosscuts, driven through the country rock from the 600 and 1250 levels of the main shaft on the granite ledge, and all the Providence workings on the back ledge are reached by means of this shaft and the two crosscuts (trans., p. 141). The horizontal distance between the two veins is approximately 500 feet.

FIG. 2.

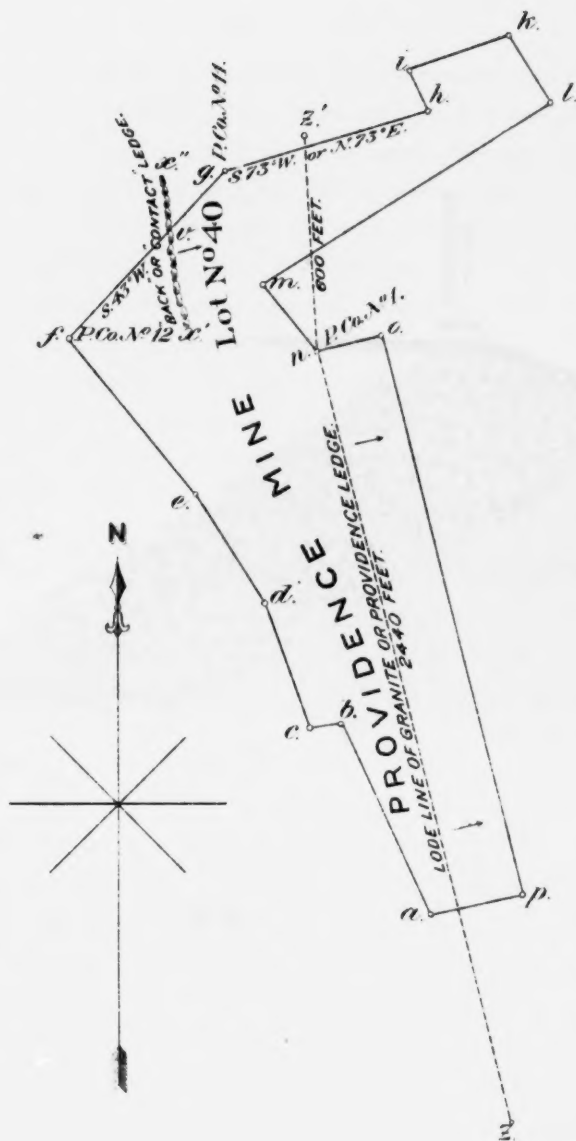


FIG. 2.



Title of Appellee and Locus of the Alleged Trespass.

The Georgetown Gold Mining Company, appellee, is the owner of two mining claims, commonly known as the New Years and New Years Extension Mines, and designated in the office of the United States Secretary General the Lodi mine as mineral (187 and 187 1/2 acres). The title is evidenced by a certified purchase deed (October 4, 1894) in the name of the United States.

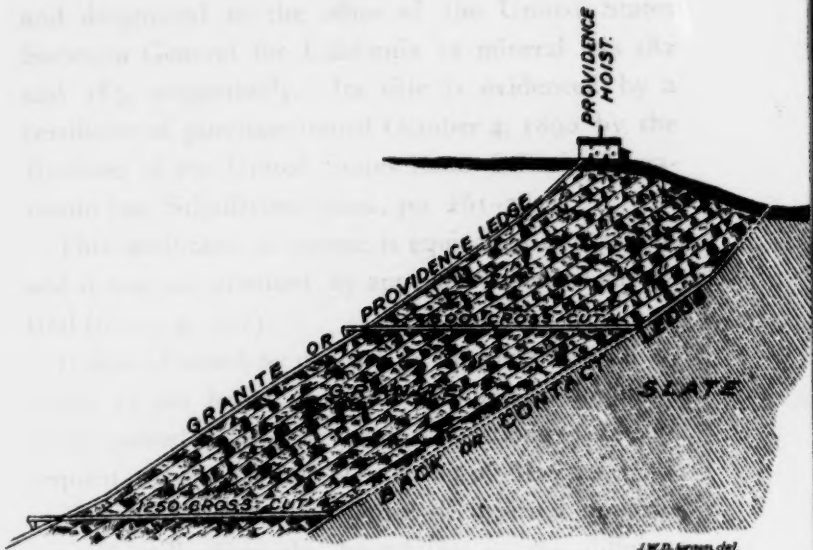


FIG. 3.

Title of Appellee and Locus of the Alleged Trespass.

The Champion Gold Mining Company, appellee, is the owner of two mining claims, commonly known as the New Years and New Years Extension Mines, and designated in the office of the United States Surveyor General for California as mineral lots 182 and 183, respectively. Its title is evidenced by a certificate of purchase issued October 4, 1890, by the Receiver of the United States Land Office at Sacramento (see Stipulation, trans., pp. 261-263).

This certificate, of course, is equivalent to a patent, and it was so admitted by appellant's counsel at the trial (trans., p. 201).

It was admitted by counsel for appellee that all *its* rights to the ledge in controversy and to the mines above named accrued by virtue of locations made subsequent to the passage of the Act of May 10, 1872.

The diagram marked figure 5, inserted opposite page 8, will show the boundaries of the different mining claims involved and the relative situation of the properties of the contending parties, the course of the "Back," "Ural," or "Contact" ledge through them, the underground workings of both appellant and appellee on this ledge, and the operation of the bounding planes contended for by the respective litigants and those fixed by the court below, and will enable us to explain the situation as it was presented to the trial court with reference to the alleged

encroachment of the appellee on the asserted rights of appellant.

This figure 5 may be termed a horizontal projection, and is a composite compiled from the various exhibits used at the trial and on the argument before the Circuit Court of Appeals.

From this diagram (figure 5) it will be observed that the ledge in controversy enters the west side line of the New Years (lot 182), passes through the collar of the Champion shaft (which is sunk on the ledge), and then crosses the north end line of the New Years extension lot 183, traverses this lot, and passes out of and through the south end line at the point "v" into the Providence. The two end lines of the New Years extension are parallel, and that they are both crossed by this ledge is established by the testimony of the engineer, C. E. Uren (trans., pp. 162-164).

The drifts colored red extending northerly and southerly from the Champion shaft are the various levels extended underneath the surface on the vein in controversy, the shaft following the vein on its downward course. The yellow lines in the Providence denote the two crosscuts extending west from the shaft on the Providence ledge through the granite to the back or contact ledge, as shown heretofore on the vertical section (see figure 3). The blue lines indicate the various drifts and levels extended by the appellant and his grantors on the ledge in dispute. The alleged trespass in this action consists in the

extension by the appellee of its levels southerly across the bounding plane drawn through the line $f-g$ produced in the direction of g' , and in extracting ore from the vein on the southeasterly side of said bounding plane. It will be observed that none of the underground workings of the Champion penetrate the bounding plane contended for by it, drawn through the line $v-v'$, and that it has extended two of its drifts a short distance only beyond the bounding plane fixed by the Court.

Contention of the Parties.

The diagram marked Fig. 4, inserted opposite page 10, will illustrate the contention of the parties.

Appellant contended that, as the contact ledge $x''-x'$ on its course crosses the line $f-g$ (see figure 4), that line becomes in law an end line, and the vertical bounding plane should be drawn through the line $f-g$, and that line produced indefinitely in the direction of g' .

Appellant also contended that the line $f-g$ was acquiesced in by appellee as a common boundary, and by reason of certain acts of its agents the appellee is estopped from disputing appellant's claim to the bounding plane drawn through $f-g$, and that line produced indefinitely in the direction of g' .

The appellee contended in the trial court, that appellant's rights on all ledges apexing within his boundaries must be fixed with regard to the *end lines of his location* and their general direction, as described in

the patent and delineated upon the map accompanying it; that the only lines appearing upon his plat (see figure 1, opposite page 4) which at all fulfill the natural or legal definition of end lines are the lines crossed by the lode $z-z'$, to wit: $g-h$ and $a-p$, and they must be construed to be the lines referred to in the Act of 1872, "as the end lines of their location;" that the rule enunciated by the Circuit Court of Appeals, Ninth Circuit, in *Tyler v. Sweeney*, 54 Federal Reporter, 284, is applicable to this case, and affords the only consistent legal solution of the controversy between the parties. (See Lindley on Mines, § 591.)

This rule would apply the line $g-h$ (*vide* figure 4, opposite this page), with a course S. 73° W., or in the direction of the dip N. 73° E., at the point v , where the ledge in controversy on its course southward crosses the boundary line $f-g$. This application would give us a bounding plane through $v-v'$, and that line produced indefinitely in that direction.

The Decision of the Trial Court.

The trial court differed with both parties, and entered a decree fixing a bounding plane to be drawn through the line $f-g$ to its intersection with the line $g-h$, and thence N. 73° E. through the line $g-h$, and that line produced indefinitely in the direction of $h'-h''$, thus awarding appellant all that portion of the ledge within the Providence ground, lying respectively south-east and south of said planes (Decree, trans., p. 80).

The reasoning upon which the result was based is

FIG. 4.

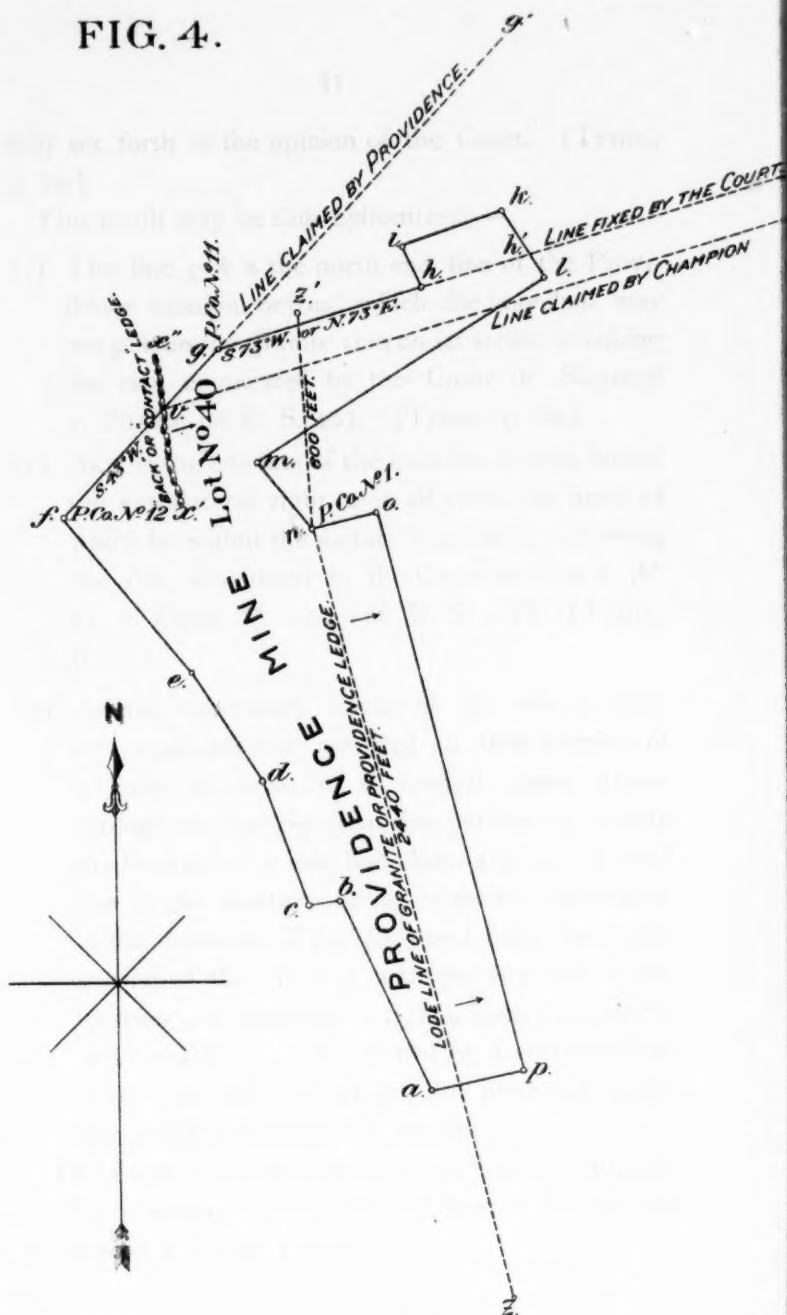
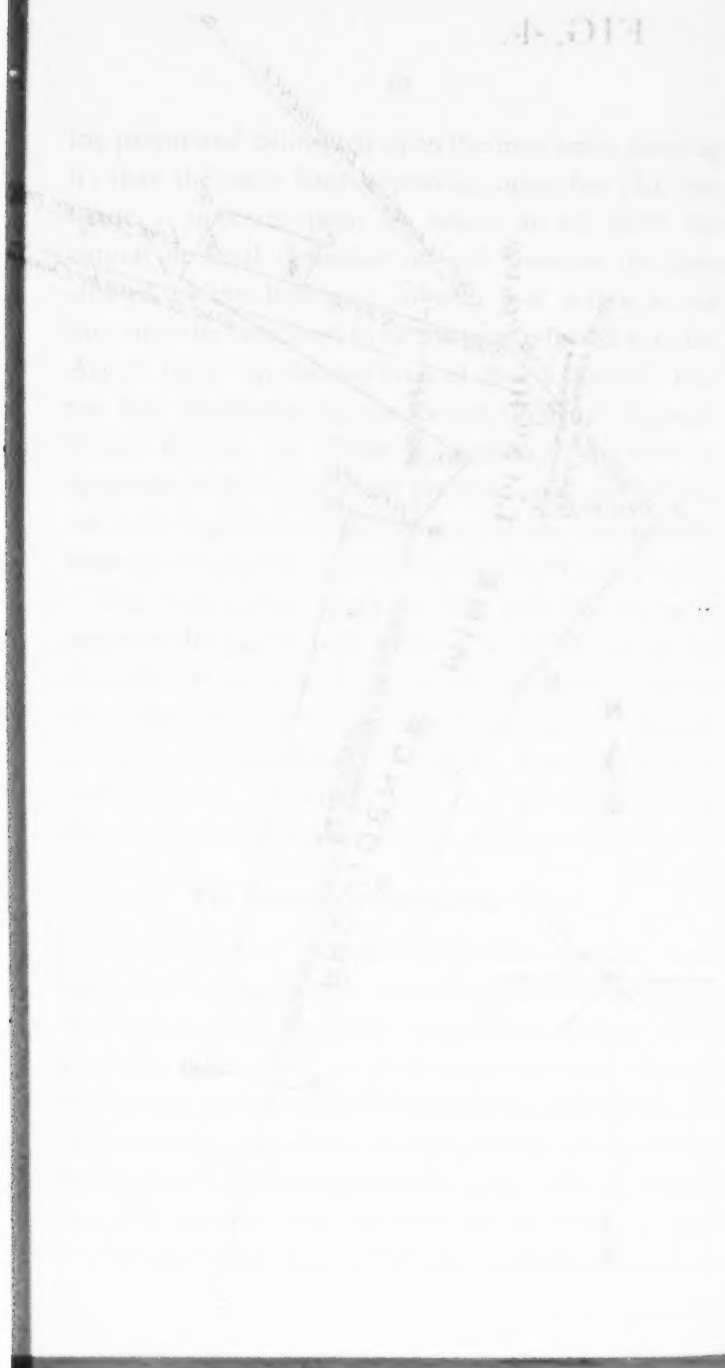


FIG. 4.



fully set forth in the opinion of the Court. (Trans., p. 82.)

This result may be thus epitomized:—

- (1) The line *g-h* is the north end line of the Providence location, beyond which the appellant may not pursue the granite vein on its strike, invoking the rule enunciated by this Court in *Flagstaff v. Tarbet*, 98 U. S. 463. (Trans., p. 88.)
- (2) As it is the end line of the location, it must bound the extralateral right upon all veins, the apex of which lie within the surface boundaries, following the rule announced by the Court in *Iron S. M. Co. v. Elgin M. Co.*, 118 U. S. 248. (Trans., p. 91.)
- (3) As the downward course of the vein is easterly, appellant was awarded all that portion of it lying southeast of a vertical plane drawn through the line *f-g* (that line performing merely the function of a side boundary, and not an end line of the location, to be extended indefinitely in the direction of the dip,) and from the intersection of the line *f-g* with the end line of the location *g-h*, appellant's rights, both intralimital and extralateral, were defined by a vertical plane drawn through *g-h* and that line produced indefinitely in the direction of the dip.

The Court also ruled against appellant's contention on the question of an agreed end line, or an end line acquiesced in by the parties.

The Decision of the Circuit Court of Appeals.

The modification of the decree of the trial court, directed by the Circuit Court of Appeals, is stated in the opening paragraph of the opinion (trans., p. 277.) which we quote:—

“In so far as the decree appealed from limits the “*extralateral*” right of the complainant to follow the “vein in its downward course by the line *f-g*, running “south 43 west, extended vertically downward, it is “erroneous, and should be modified.”

As we understand the decree of the trial court, no attempt was made by it to limit the *extralateral* right by this bounding plane. The vertical bounding plane was fixed for the purpose of determining the *intralimital* rights on the ledge. As the vein dipped to the east in its course downward, it would not pass out of and beyond the plane drawn through *f-g*. The vein dips *away* from this plane, and not toward it. The decree of the trial court was framed in the light of this geological fact. Should the vein on its downward course by some freak of nature change and dip in an *opposite* direction, the modification might become effective, otherwise it is a mere abstraction.

There is nothing in the decree of the trial court purporting to limit the *extralateral* right by a vertical plane drawn through any *side* line. The *extralateral* right fixed by this decree is defined with reference to the *end* lines *g-h* and *a-p*. That the Circuit Court and Circuit of Appeals are in entire harmony upon

this point is manifest from the concluding paragraph of the opinion of the latter court. "It" (the extralateral right) "should be bounded by vertical planes " drawn downward through the end line $g-h$ and the " *end line $a-p$* extended indefinitely in their own direction." Of course the Court means by this, *extended in the direction of the dip*, as by extending such a line in the opposite direction there would be nothing on which it could operate. There would be no "outside parts" related to the vein lying within the surface boundaries which would be intersected by a vertical plane drawn through such extended surface boundary.

The decision of the Circuit Court of Appeals, construed in the light of the conceded facts, is a practical affirmance of the decree of the court below. Much of the argument of counsel for appellant is based, in my judgment, upon a mistaken view of this decision. We shall have occasion to recur to this.

The concurring judgment of both courts may be thus succinctly stated: The appellant may not pursue the contact vein on its strike or onward course beyond the lines $f-g$ and $g-h$. His extralateral right (the right to pursue the vein on its downward course) is to be defined by vertical planes drawn through $g-h$ and $a-p$ extended in the direction of the dip. The appellant may pursue the vein on its downward course outside of and beyond its side line planes, provided he keeps within his end line planes down through $g-h$ and $a-p$.

Assignments of Error.

The record shows ten assignments of error. The first eight attack so much of the decree as establishes the line $g-h$ as an end line, for the purpose of determining the extralateral right, or fails to establish the line $f-g$ and that line produced indefinitely in the direction of g' as such end line. The last two assail so much of the decree as awards to appellee the right to pursue the vein on its downward course underneath the parallelogram $h-l-k-h'$. I have failed to note in these assignments any specific objection to so much of the decision of the Circuit Court of Appeals as directs a modification of the decree entered in the court below.

There are but two questions submitted to this Court under the assigned errors:—

(1) What are the extralateral rights of the appellant on the contact vein?

(2) What portion of the contact vein underlying appellant's surface boundaries was conveyed to him by the Act of May 10, 1872?

The Law.

Appellant's grantors originally located 3100 feet of the Providence or granite ledge $z-z'$. The Providence patent purports to grant "3100 linear feet of the Providence ledge with surface grounds as herein-
"after described," as shown in figure 1, opposite p. —

of this brief. The length of the lode between points of intersection with the lines $g-h$ and $a-p$ is only 2400 feet.

It is claimed by appellant that the principal thing patented is the lode; that the northern limit of appellant's right upon the lode is at the point z' , thirty feet north of the line $g-h$, and the southern limit 670 feet south of the line $a-p$; that the patented surface area was simply granted for convenient working purposes, and the lines of such surface, however they might have been constructed, could not abridge or limit the right upon the ledge; that although the lines $g-h$ and $a-p$ are crossed by the lode in its course, or strike, and are substantially parallel to each other, they cannot be considered as end lines, because they do not bound the extremities of the lode right of 3100 feet; that such lines do not perform the function of end lines as applied to the granite ledge acquired under the Act of 1866, and, therefore, should not be considered as factors in determining petitioner's rights upon the contact ledge $x'-x''$, which came to him by the grace of the Act of 1872; that any line of the many-sided figure of the location which may be fortuitously crossed by a ledge on its onward course other than the ledge upon which the patent was based, becomes, from the fact of such crossing, an end line, not simply for the purpose of defining the right to pursue the vein on its strike, but also for the purpose of defining and regulating the dip rights and extralateral privileges, and is to be produced indefinitely in the direction of the dip.

This leads us to the discussion of the law and the decisions thereunder.

NOTE.—*In developing the law of this case, counsel for appellant frequently cite "Lindley on Mines," a treatise, of which I am the author. Their courteous and graceful reference to the work exhibits a chivalrous and generous spirit, not always displayed towards an adversary in forensic debate. In the presence of such compliments as are thus expressed and implied, I am almost constrained to avoid all further reference to the treatise. I shall only do so where in my humble judgment the distinguished counsel have drawn erroneous conclusions from cited sections, or overlooked some elements which are logically deducible from accepted doctrines. The work is not an ex cathedra statement of the law. It will only be accepted, as this brief will be, either as based upon sound reasoning, and therefore a correct exposition, or as constructed upon false or mistaken theories, and therefore to be disregarded.*

I.

As to appellant's rights to the "Granite Ledge" under the Act of 1866, and the patent issued thereunder, and the relationship between that lode and the surface boundaries of the "location."

We are not directly concerned with the pursuit of the granite ledge $z-z'$ after it leaves the surface boundary lines of the Providence location. A discussion of the rights asserted by petitioner thereto is simply incidental to the main issue.

That he cannot follow it on its course beyond the surface boundaries is no longer an open question.

The doctrine contended for by the appellant that the Providence patent conveyed 3100 feet of the granite lode, although only 2400 feet was included within the surface boundaries — thus giving the patentee the right to pursue the vein on its strike beyond these boundaries — has been judicially condemned in a number of well considered cases arising under the Act of 1866 —

Flagstaff Mining Co. v. Tarbet, 98 U. S. 463;

McCormick v. Varnes, 2 Utah, 355;

Wolfley v. Lebanon Mining Co., 4 Colo. 112,—
as well as under the existing law.

Argentine Mining Co. v. Terrible Mining Co.,
122 U. S. 478;

Iron Silver Mining Co. v. Elgin, 118 U. S. 196.

The most recent decision upon the subject is by the Supreme Court of Montana.

Montana Ore Purchasing Co. v. Boston & M.

C. C. & S. M. Co., 51 Pac. Rep. 159.

The facts involved in the Flagstaff-Tarbet case are illustrated on pages 70 and 712, Vol. I, and in the Argentine-Terrible case on page 713, Vol. II, of "Lindley on Mines," referred to by counsel for appellant (appellant's brief, p. 15).

The patents in all these cases were similar in terms to the Providence patent under consideration in this case.

This is manifest from the record on file in this Court in the Flagstaff case *supra* (No. 173, October Term, 1878), as well as from the opinion of the Supreme Court of Utah in *McConnell v. Varnes*, *supra*, and of this Court in the Flagstaff case.

If these patents purport to grant more of the vein in length than is included within the surface boundaries, they are broader than the law, and to this extent are void and unauthorized.

Counsel for appellant quotes from Section 568, "Lindley on Mines":—

"The government being the owner of the fee may 'carve from it the ownership of the vein. It may 'grant the surface to one and the vein to another.'"

This was said in reference to the grant of the right to pursue the vein in *depth*—the extralateral right—where the law expressly provides for such a severance. In the case of rights on the vein in *length*, no sanction of the law is found for a grant beyond the end lines. This must be true, or the decisions in Flagstaff-Tarbet and Argentine-Terrible cases, are to be set aside as valueless.

Whatever may have been the rights under the original locations by virtue of the miners' rules and customs, the patent sought for and obtained in connection with the law under which it is issued is the measure of appellant's rights.

Under this patent, as construed by the courts, the lines *g-h* and *a-p* are end lines on the granite ledge—

the *end lines of the location*,—beyond which petitioner is not permitted to go on either strike or dip.

As was said by this Court in the Flagstaff case, *supra*:—

“ We think that the intent of both statutes (1866
“ and 1872) is, that mining locations of lodes or veins
“ shall be made thereon lengthwise in the general
“ direction of such veins or lodes on the surface of the
“ earth where they are discoverable, and that the end
“ lines are to cross the lode and extend perpendicu-
“ larly downward.”

In this view the lines *g-h* and *a-p* are ideal end lines, and, considered in connection with the ledge originally patented which crosses them, they are the only lines of the location which could in any way be treated as end lines at the time the Act of May 10, 1872, was passed, granting to the patentee the *other* ledges apexing within the lines of the Providence location. The trial court and the Circuit Court of Appeals so determined.

II.

As to appellant's extralateral right upon the “Back” or “Contact” ledge under the Act of 1872, and the relationship between that ledge and the surface boundaries of the “location.”

The patent issued to appellant's grantors conveyed but one vein.

Eureka Case, 4 Sawy. 302, 323;

Eclipse G. & S. Mining Co. v. Spring, 59 Cal.

All other veins were required by the terms of the law to be excepted from the patent.

"No patent shall issue for more than one vein or lode, which shall be expressed in the patent issued."

Act of 1866, sec. 3, 14 Stats. at Large, p. 251.

It is thus *expressed* in the Providence patent. (Transcript, p. 354, paragraph "*First*.")

This vein was, of course, the granite vein.

Whatever rights upon the contact or back ledge appellant may have, they all accrued to him by virtue of the following provisions of the Act of May 10, 1872:—

"The locators of all mining locations heretofore
 "made, or which shall hereafter be made, on any
 "mineral vein, lode, or ledge, situated on the public
 "domain, their heirs and assigns, where no adverse
 "claim exists on the tenth day of May, eighteen hun-
 "dred and seventy-two, so long as they comply with
 "the laws of the United States, and with State, Ter-
 "ritorial, and local regulations not in conflict with the
 "laws of the United States governing their possessory
 "title, shall have the exclusive right of possession and
 "enjoyment of all the surface included within the
 "lines of their locations, and of all veins, lodes, and
 "ledges throughout their entire depth, the top or apex
 "of which lies inside of such surface lines extended
 "downward vertically, although such veins, lodes, or
 "ledges may so far depart from a perpendicular in
 "their course downward as to extend outside the

“ vertical side lines of such surface locations. But their
 “ right of possession to such outside parts of such
 “ veins or ledges shall be confined to such portions
 “ thereof as lie between vertical planes drawn down-
 “ ward, as above described, through the end lines of
 “ their locations, so continued in their own direction
 “ that such planes will intersect such exterior parts of
 “ such veins or ledges. And nothing in this section
 “ shall authorize the locator or possessor of a vein or
 “ lode which extends in its downward course beyond
 “ the vertical lines of his claim to enter upon the
 “ surface of a claim owned or possessed by another.”

Act of May 10, 1872, sec. 3;

Sec. 2322, U. S. Rev. Statutes.

It will thus be seen that by the terms of the Act the grant to such parts of the contact ledge as in depth might pass outside of and beyond vertical planes drawn through the surface boundaries, was limited to such “outside parts” of such vein as was found between vertical planes drawn downward “through *the end lines* of their locations * * * so “continued in their own direction that such planes will “inteseet such exterior parts of such veins or ledges.”

What were the *end lines* of that location at the time the Act of 1872 was passed, and to which the Act referred? (See figure 1, opposite p. 4 of this brief.) Certainly not the line *f-g*, as this line was established long before as a surface boundary—not intersected or touched by the granite ledge—and at that date at least

not performing any functions of an end line. Certainly not at the termination of the 3100 feet at z' , as no end line is there established, and, if it is implied, its length is simply the width of the vein, and there is no apex of the back vein found within any surface bounded by such hypothetical end line.

It seems so obvious to us that the line $g-h$ is the *end line* of the location referred to in section 3 of the Act of May 10, 1872, that we can see no necessity for argument.

But appellant asserts that because the back or contact ledge crosses the line $f-g$, that line becomes an end line, and he is entitled to produce it indefinitely in the direction of g' . This course of reasoning involves him in this absurdity. He has an end line plane somewhere on the granite ledge—either the line $g-h$ or an imaginary one whose length is the width of the lode, drawn at right angles to the course of the vein at z' . His contention would give him, in addition to this, another and altogether different end line plane on the back vein—the line $f-g$ and that line produced indefinitely, and, if any other veins should be discovered passing out of any of the other numerous surface lines, each one of these lines would become an end line, to be produced indefinitely in its own direction, and he would have as many different end line planes as he has surface boundaries crossed by a ledge, giving his location with his produced end lines the appearance, in horizontal projection, of a buzz-saw.

The end line cases, in which the courts generally announce the doctrine that where a vein in its course crosses side lines those lines become end lines, are all cases where the vein crosses two parallel lines.

Flagstaff v. Tarbet, 98 U. S. 463;

Argentine v. Terrible, 122 U. S. 478;

King v. Amy—Silversmith Case—152 U. S.

222.

Speaking of these cases, Judge Hallett, in a very recent case, says:—

“These decisions do not affirm that all lines of a location crossed by a lode on its strike shall be end lines. The most that can be deduced from them is, that opposite lines parallel to each other, when crossed by the lode, are end lines.”

Del Monte M. & M. Co. v. New York L. & C. Co., 66 Fed. 215.

And this Court, in the recent case of *Last Chance M. Co. v. Tyler*, 157 U. S. 683, asserts that these cases do not determine the rule to be applied where a vein crosses an end line and a side line.

The side line crossed by a ledge performs the function of an end line to the extent of stopping the further pursuit of the vein on its strike, and this is the extent only to which the decision of the courts have reached.

In the case of the *Iron S. M. Co. v. Elgin M. Co.*, 118 U. S. 208, Justice Field, delivering the opinion of the Court, says:—

“ It often happens that the top or apex of more than
 “ one vein lies within such surface lines, and the
 “ veins may have different courses and dips, yet his
 “ right to follow them outside of the side lines of the
 “ location must be bounded by planes drawn vertically
 “ through *the same end lines*. The planes of the end
 “ lines cannot be drawn at right angles to the courses
 “ of all the veins if they are not identical.”

Judge Hawley, in his opinion in the case at bar, quotes the above citation, adopts its reasoning, and thus sums up the case:—

“ It necessarily follows that the end lines of the
 “ Providence survey must be considered by the
 “ Court as the end lines of any and all other lodes or
 “ veins which lie inside of such surface lines.”

Trans., p. 90;

63 Fed., p. 557.

“ In the present case the end lines of the Provi-
 “ dence — *a-p* and *g-h* — are conceded to be sub-
 “ stantially parallel with each other, and that the
 “ Providence lode in its course lengthwise passes
 “ these end lines. Complainant's contention would
 “ take the ‘back’ or ‘contact’ vein outside of the
 “ plane of the northerly end line of the Providence
 “ drawn downward vertically, and give to him extra-
 “ lateral rights not granted by the patent nor given
 “ to him by the granting provisions of the Act of
 “ 1872.”

Trans., p. 91;

63 Fed., p. 558.

The decree of the trial court as affirmed by the Circuit Court of Appeals in the case at bar dealt liberally with petitioner in fixing his bounding plane on the back or contact ledge through the line $g-h$, and that line produced indefinitely in its own direction, *i. e.* towards the dip of the vein. This is such segment of the ledge "as lies between vertical planes drawn "downward * * * through the end lines of their "location," and is that segment *donated* to petitioner by the generosity of the Act of 1872.

We think it clearly established that the end line plane, fixed by the Circuit Court of Appeals, is an application of a principle of law recognized uniformly by the courts, and that there are no conflicting decisions upon the subject to be reconciled or harmonized by the Court.

Counsel for appellant, in commenting on the establishment of the line $g-h$ and the plane of that line indefinitely, says that it results "in giving, as the dividing "line between the two properties, a line that does not "run between them at all" (appellant's brief, p. 33), and proceeds to evolve from this certain illustrations by way of *reductio ad absurdum*.

Inviting the Court's attention for the moment to appellant's figure 9, opposite page 33 of his brief, it will be observed that he has protracted the lines $g-h$ and $a-p$ in *both* directions, east and west, in the direction of the dip, as well as in the opposite direction. In doing this, counsel misinterprets the decree of both courts, as we have heretofore shown. (*Ante*, page 12.)

As a surface end line can only be extended in its own direction for the purpose of constructing a bounding plane which will intersect the "outside parts" of the vein after passing on its downward course beyond a side line plane, and as this line or plane performs only this function, will counsel inform the Court what outside parts of the contact vein lying west of any of the Providence western boundaries, could be reached by appellant in following the vein on its *downward* course from any point on the vein within the Providence surface boundaries? The vein on such *downward* course does not pass out of and beyond the plane drawn through the line *f-g*, or any of the western boundaries; consequently there is no sanction for arbitrarily producing this line, or the line *a-p*, indefinitely in its own direction *westerly*. There is nothing upon which such extended planes can operate. Counsel for appellant candidly says that the contact vein passes out of the Providence and into the Champion on its *strike* and not on its dip (appellant's brief, p. 33).

That the line established by the Court may not be a common surface boundary is of no moment. Logically stated, the Court is only called upon to define the segment of the contact vein which was granted to appellant by the Act of 1872, and in this determination the lines of other claims are in no sense factors. The line *f-g* is, for a short distance only, coterminous with appellant's New Years Extension boundaries. The south end line of the New Years Extension cuts

the contact vein at right angles, while the line *f-g* cuts it at an obtuse angle. The dip rights on a vein are determined by the true end lines of the claim, and are not, necessarily, controlled or affected by the fact that such end lines may or may not be also the boundaries of an adjacent proprietor.

Surface rights between two coterminous mining proprietors are defined by coterminous surface boundaries. The line *f-g* performs this function to a limited extent, and this function alone. Dip rights are determined by the "end lines of the location," whether coterminous or not. The line *g-h* is such an end line.

Having determined what segment of the contact vein passed to appellant by the Act of 1872, it is easy to determine what remained subject to appropriation under the mining laws.

What was so subject to subsequent appropriation will be considered in connection with the discussion of the appellant's intralimital rights in this vein.

III.

As to the Alleged Estoppel.

The evidence relied upon to establish a so-called estoppel is found in the record.

This evidence consists of recitals in a relocation made by respondent's agents, called the New Years Extension Relocation, certain proceedings of the Board of Directors of appellee, and some parol testimony of an indefinite nature.

The relocation containing the recitals relied upon is found upon pages 31 and 32 of the transcript.

It may be temporarily conceded for the purpose of argument that the location of the New Years Extension, as originally made on the surface, overlapped and conflicted with the Providence patented ground, crossing the line *f-g*, the conflict area consisting of a small triangle, covering a small segment of the contact lode within the Providence ground.

The avowed purpose of this relocation was "to correct errors of description of said original notice and to conform said description to the actual boundaries of said mine and to the requirements of the law."

Trans., p. 31.

The notice of relocation also contained the following recital:—

"And, whereas part of this claim as originally described, and as hereby relocated, conflicts with the rights granted by the letters patent of said Providence mine, said lot 40; now, therefore, so much of this claim, both for lode and surface ground, as originally conflicted, or now conflicts, with any portion of the surface or lode claims, or rights granted by said patent, is and are hereby abandoned, which portion of this claim so abandoned is described as follows, to wit: All that portion of the above-described New Years Extension claim for surface and lode which lies south of the northern boundary line of said Providence mine, which runs N. 43 deg. 10 min. E., across the southeastern corner of this claim."

This relocation is dated November 15, 1884.

With reference to this notice of relocation, the attention of the Court is invited to the following facts:—

The portion of the surface and lode abandoned is that portion which *was granted to the Providence Company by the Providence patent*. It did not purport to yield or surrender to the Providence Company anything which was not already covered by their patent. The Providence Company was not a party to the instrument. It is in no sense an end line *agreement*, as in the Eureka Case, 103 U. S. 839. It was simply a recognition of the line as a common surface boundary, and an acknowledgment that the Providence owned such portion of the contact ledge as was granted by the Act of Congress, May 10, 1872. That is the length and breadth of it.

In addition to this it ante-dated by six years the acquisition by appellee by certificate of purchase of the title to the New Years Extension, the certificate having been issued October 4, 1890. Even if the relocation could be possibly distorted into anything like an equitable estoppel, the estoppel only operated upon such title as respondent then had, and did not control title subsequently acquired.

Russell v. Brosseau, 65 Cal. 605;

Montgomery v. Whiting, 40 Cal. 294;

Thrift v. Dulaney, 69 Cal. 189;

Caperton v. Schmidt, 26 Cal. 513;

Mahoney v. Van Winkle, 33 Cal. 448;

Reed v. Calderwood, 32 Cal. 109;
Amesti v. Castro, 49 Cal. 325;
Merryman v. Bourne, 9 Wall. 592;
Erwin v. Garner, 9 N. E. 417.

The entry and payment to the Government and the issuance of a certificate of purchase is a newly acquired title.

Hamilton v. Sierra Nev. G. & S. M. Co., 13
 Sawy. 113;
Thrift v. Dulaney, 69 Cal. 191.

A relocation of the same mining claim has been held to be a newly acquired title.

Russell v. Brosseau, 65 Cal. 605.

A patent issued upon a Mexican grant is a newly acquired title, although the inchoate right to a patent existed at the time of the treaty of cession.

Amesti v. Castro, 49 Cal. 325;
Merryman v. Bourne, 9 Wall. 592;
Wilkins v. McCue, 46 Cal. 656.

If the abandonment included anything not covered by the Providence patent, it was an abandonment to the Government, and not to the owners of the Providence, and the subsequent deed of the Government conveyed the title to the petitioner, and the Providence owners have no cause of complaint.

The trial court held that this abandonment did not give to the Providence any greater rights than it pre-

viously had (Opinion, trans., p. 93), thus obviating the necessity of passing upon the question of subsequently acquired title. Appellee's title was evidenced by a certificate of purchase. (Trans., pp. 261, 262.) Certainly this relocation, antedating the certificate of purchase (the equivalent of a patent) could not be used for the purpose of impeaching appellee's conveyance from the government, or limit its operative force. So much for the so-called "agreement," which is in no sense an agreement; nor does it possess any of the essential elements of estoppel.

In the record, as well as upon the maps of appellant, mention is made of the "Annex" location. It cut no figure in the case. It had nothing to do with appellee's title to the "New Years Extension." It was like many other locations in the mining regions whose life is a year and a day.

As to the records of the corporation introduced on the question of supposed estoppel, they will be found in the transcript at pages 175 and 176. They establish the authority to make necessary relocations, and as the reports from the mine were "of an unsatisfactory and incomprehensible nature," the superintendent, Mr. Vincent, was sent to the mine and authorized to use his own discretion in regard to the work to be prosecuted, and to stay there such a length of time as he may consider necessary.

From this, counsel for petitioner wish to infer authority delegated to Vincent to agree upon a bounding plane. If such a construction could be

possibly placed upon the action of the Board of Directors, Vincent never attempted to exercise any such authority.

Mr. Vincent was permitted to testify under respondent's objection that he laid out the Champion shaft parallel to the line $f-g$ —which is the only way any sane man would lay it out,—and that he told Richard Walrath, brother of petitioner, that so long as he was superintendent, he would respect the line $f-g$.

This is all there is in the record to support the alleged estoppel.

Certainly Vincent had no implied authority to assent to any boundary line.

Overman S. M. Co. v. American S. M. Co.,
7 Nev. 312.

If he did, as before observed, he never attempted to exercise it. In any event, mining companies are not to be divested of their rights in any such loose and equivocal way. An agent may in some cases, acting within the scope of his authority, bind a corporation. But the existence of such authority and its extent must be shown, not by the testimony of the agent, but by the action of the Board of Directors duly convened and acting as a Board, as evidenced by the records of the company.

Counsel for appellant lays some stress upon the fact that the Champion Company never undertook to penetrate the plane drawn through the produced line $f-g-g'$ until a short time before the commencement of

this action, and reasons from this an acquiescence in this line as thus produced from lapse of time, with a suggested element of an adverse holding.

There are several complete answers to this question.

(1) The line *f-g* was only recognized as an exterior boundary of the Providence surface. It never was recognized as a line that could be produced indefinitely beyond its surface termination. We have never disputed the line *f-g* as being a true surface boundary line of the Providence.

(2) This action was commenced in 1892. Appellee's patent (certificate of purchase) was not issued until 1890. The Statute of Limitations in California is five years.

(3) The possession of the Providence surface is not possession of any part of the ledge outside the surface boundaries. Nor is it possession of any part of the vein within vertical planes drawn through the surface boundaries, the surface which has been by operation of law severed from the ownership of the soil.

Caldwell v. Copeland, 37 Penn. St. 427;

Armstrong v. Caldwell, 53 Penn. St. 284.

By the Act of 1866, under which appellant claims title to the Providence mine, the contact ledge was specially reserved out of the patent. It was severed from the overlying surface.

See, *ante*, subd. II, page 19;

2 Lindley on Mines, §§ 568, 812.

Up to the passage of the Act of 1872, appellant's possession of the Providence surface was not in law the possession of any part of the contact vein. After the passage of this Act, the surface possession could only be extended to such portion of the vein as was clearly within the grant. It certainly could not be extended to "outside parts" not covered by the grant.

(4) A glance at the underground workings of appellee, shown in red on figure 5, opposite page 8, of this brief, shows that none of the upper levels reached plane $f-g-g'$. The condition of these drifts indicates the reason why they were not extended. There was nothing appearing in their face to justify the miner in continuing the pursuit of the vein. If all these drifts came up to this plane and stopped, it might be some evidence of the appellee's views as to the extent of the appellant's underground rights. When appellee did cross this plane in the lower levels, the inference is irresistible that its underground works had reached a pay "shoot" and followed it.

IV.

As to appellant's intralimital rights to the contact ledge, and that portion of the decree awarding to appellee the right to take that segment of the vein underlying the parallelogram $h-i-k-h'$.

Assuming that the court below was right in fixing the line $g-h$ and its prolongation as the line through which a bounding plane should be drawn defining appellant's *extralateral* right, the case narrows itself

down to a consideration of that segment of the contact ledge lying vertically underneath that portion of the Providence surface boundaries defined by the parallelogram $h-i-k-h'$, shown on the several exhibits (figure 4 of this brief, opposite page 10, and figure 5, opposite page 8).

It will be observed that this segment of the vein lies north of and beyond the *end* line of the location as fixed by the Court. In other words, relatively considered, that portion of the vein is a part of the vein on its *strike*, and not on its dip.

That the appellant cannot pursue this vein on its *strike* beyond the end line plane established by the Court, would seem to follow as a corollary from the rules announced under subdivision I of this brief. In addition to this, it must be borne in mind that the Providence patent is of itself evidence of no title to any segment of the contact vein.

The Act of 1872 is the appellant's muniment of title to such segment. The patent is resorted to for the purpose of ascertaining what were the lines of the location.

The language of the Act granting veins which have their tops or apices within the surface boundaries applies to locations theretofore and thereafter made indiscriminately. Therefore in determining the extent of this grant, so far as the Providence is concerned, we are required to accept the interpretation applied by the courts to the Act of 1872 in considering locations made under it. In other words, no greater *intralimi-*

tal rights are conferred upon the Providence owner than could be acquired through a location similar in form made under the Act of 1872, where the vein in controversy crosses a *side* and not an *end* line.

In determining what is the correct exposition of the law in a case of this character, we naturally seek light in those cases involving a discussion of the extralateral right where a vein crosses a side line, and from these cases select and apply the underlying principles resorted to in defining this right.

As to what these principles are, I have endeavored to explain in §§ 586, 587, 588, 589, 590, 591, and 610, of "Lindley on Mines." Most of these sections are referred to by counsel for appellant. Some of them are not. I may therefore be excused for inviting the attention of the Court to them.

In § 610 I have endeavored to present my understanding of the rule to be applied to the case at bar.

In my judgment, the authorities cited in support of the doctrines announced in these sections permit the following deduction:—

The extent of the right in a vein in depth depends upon the extent of the top or apex of a vein found within the lines of a location, at least in the presence of an adjoining proprietor, covering by regular valid location that portion of the apex lying outside of the prior locator's boundaries. In other words, the right of a first locator to the vein in depth is to be determined by (1) the length of the apex within his surface; (2) the application at the point of departure

from the side line of the plane of the end line of the location.

That a junior apex proprietor may follow his vein on its downward course into and underneath the ground of a prior locator is, I think, logically determined in the case of *Colorado Central v. Turck*, 50 Fed. 888, 895.

The instances where a bounding plane of a prior appropriator may not be invaded by a junior locator are illustrated, according to my understanding of the law, in § 609, "Lindley on Mines," where the cases are cited and commented upon.

To sustain his theory as to appellant's ownership of that segment of the vein underlying the parallelogram *h-i-k-h'*, counsel cites the cross-lode cases of *Wilhelm v. Silvester*, 101 Cal. 358, and *Watervale v. Leach*, 33 Pac. Rep. 418. These cases are not in point. In each of them there was a surface conflict and an attempt of a junior locator to appropriate that portion of the *apex* of a vein lying within a senior locator's surface boundaries. (See discussion and illustrations in §§ 558, 559, 560, "Lindley on Mines," cited by appellant.)

I am advised that this Court has now under consideration the question as to the rights of the respective parties where a vein passes out of a side line of one location into and through the end line of another. I refer to the case of *Del Monte M. & M. Co. v. The Last Chance*, pending on appeal from the Eighth Circuit. I understand that the case has been ably argued

and presented, and I cannot hope to add anything to what was there said.

Counsel for appellant, in discussing the question of his extralateral right, invites attention to the fact that, by constructing an end line plane through the line $f-g-g'$, he would have an end line nonparallel and diverging in the direction of the dip, thus giving him in depth infinitely more longitudinally than he has apex within his surface boundaries. He says that this makes no difference, as under the Act of 1866 *end* lines were not required to be parallel, and cites "Lindley on Mines," § 592. If the Court will examine his figure 9, opposite page 34 of his brief, it will observe the modesty of his claim in the direction of the dip. Within an assumed apex of seven hundred feet he has at a depth of say two thousand feet in the neighborhood of *five thousand* feet on the vein, measured horizontally between g' and E' , and constantly increasing.

If the line $f-g$ had been an original end line on the granite ledge at the time the Act of 1872 was passed, and the contact ledge was afterwards discovered also crossing it, I am of the opinion that the rule announced in "Lindley on Mines," § 592, would apply for the reasons therein explained. But as the line $f-g$ was not such an end line, it seems to us that his illustration is a most powerful and convincing argument against his own contention.

The Act of 1872 was liberal enough in its donation, confirming to appellant as much of the two veins as might be within his original end line planes. His

claim to another end line, giving him in depth a horizontal length of a possible ten thousand feet or more on another vein, in our judgment lacks even plausibility.

If there was any error committed by the Circuit Court of Appeals, or the Circuit Court, it was to the detriment of the appellee, in not fixing the bounding plane $v-v'$ at the point where the contact ledge crossed the Providence line $f-g$.

As the segment underlying the parallelogram $h-i-k-h'$ is without the end line planes of the Providence, is in no way related to that portion of the apex lying within its boundaries, but is within the end line planes of the Champion and underlying its duly appropriated apex, the Court was right in permitting the Champion to take this segment of the vein.

We respectfully submit that the record discloses no error, and that the decree should be affirmed.

CURTIS H. LINDLEY,
LINDLEY & EICKHOFF,
Solicitors for Appellee.

Syllabus.

WALRATH v. CHAMPION MINING COMPANY.

APPEAL FROM THE CIRCUIT COURT OF APPEALS OF THE NINTH CIRCUIT.

No. 280. Argued April 22, 1898. — Decided May 31, 1898.

On the 28th of April, 1871, on a previous location made in 1857, the Providence Gold and Silver Mining Company obtained a patent in which it was recited that it was "the intent and meaning of these presents to convey" to the company "the vein or lode in its entire width for the distance of 3100 feet along the course thereof." Under that act a patent could be issued for only one vein; but the act of May 10, 1872, c. 152, gave to all locations theretofore made, as well as to all thereafter made, all veins, lodes and ledges, the top or apex of which lies inside of the surface lines. September 29, 1877, the Champion Mining Company made a location upon the Contact Vein, which overlapped the Providence location, both as to surface ground and lode. In 1884 a dispute took place, which brought about relocation of the lode line of the Champion Company; but eventually the conflicting claims resulted in this suit. *Held*,

- (1) That the extent of the rights passing under the act of 1866 was decided by this court in *Mining Co. v. Tarbet*, 98 U. S. 463, viz.: that "the right to follow the dip of the vein is bounded by the end lines of the claim;"
- (2) That that right stops at the end line of the lode location, terminated by vertical lines drawn downward;
- (3) That the original location and lode determined those end lines.

The following propositions, announced in *Del Monte Mining Co. v. Last Chance Mining Co.*, ante, 55, are affirmed with the addition that the end lines of the original veins shall be the end lines of all the veins found within the surface boundaries: "First, the location as made on the surface by the locator determines the extent of rights below the surface. Second, the end lines, as he marks them on the surface, with the single exception hereinafter noticed, place the limits beyond which he may not go in the appropriation of any vein or veins along their course or strike. Third, every vein 'the top or apex of which lies inside of such surface lines extended downward vertically' becomes his by virtue of his location, and he may pursue it to any depth beyond his vertical side lines, although in so doing he enters beneath the surface of some other proprietor. Fourth, the only exception to the rule that the end lines of the location as the locator places them establish the limits beyond which he may not go in the appropriation of a vein on its course or strike is where it is developed that in fact the location has been placed not along but across the course of the vein. In such case the law declares that those which the locator called his side lines are his end lines, and those which he

171	236
L-ed	170
100 f	915

171	236
L-ed	170
108 f	194

171	236
L-ed	170
101 f	521
104 f	667

Statement of the Case.

called end lines are in fact side lines, and this upon the proposition that it was the intent of Congress to give to the locator only so many feet of the length of the vein, that length to be bounded by the lines which the locator has established of his location."

There is no merit in the contention that by agreement, by acquiescence, and by estoppel, the line *f-g* on the plan has become the end line of the two claims.

It is the end lines alone which define the extralateral rights, and they must be straight lines, not broken or curved lines, and to such the right on the vein below is strictly confined.

THIS action, brought in the Superior Court of Nevada County, California, involves title to a triangular shaped section of what is known as the "Contact," "Ural" or "Back" ledge of gold-bearing ore, situated in the same county, claimed by appellant to be a portion of the Providence Mine, to which complainant has title through a patent from the United States, and by appellee, a corporation, to be a part of the New Years Extension Mine owned by it.

The relative situation of the two properties and the portion of the ledge in controversy is shown by Figure No. 1 on page 295; the disputed section being contained between the lines thereon marked "Line claimed by Providence" and "Line claimed by Champion."

The figures marked "New Years" and "New Years Extension" represent the surface of the mining properties owned by defendant, while that marked "Providence Mine" represents the surface of the patented ground of the plaintiff.

The action was brought May 24, 1892, to recover \$300,000 damages for ore extracted from the ledge and carried away by the defendant, and for an injunction against further trespasses thereon.

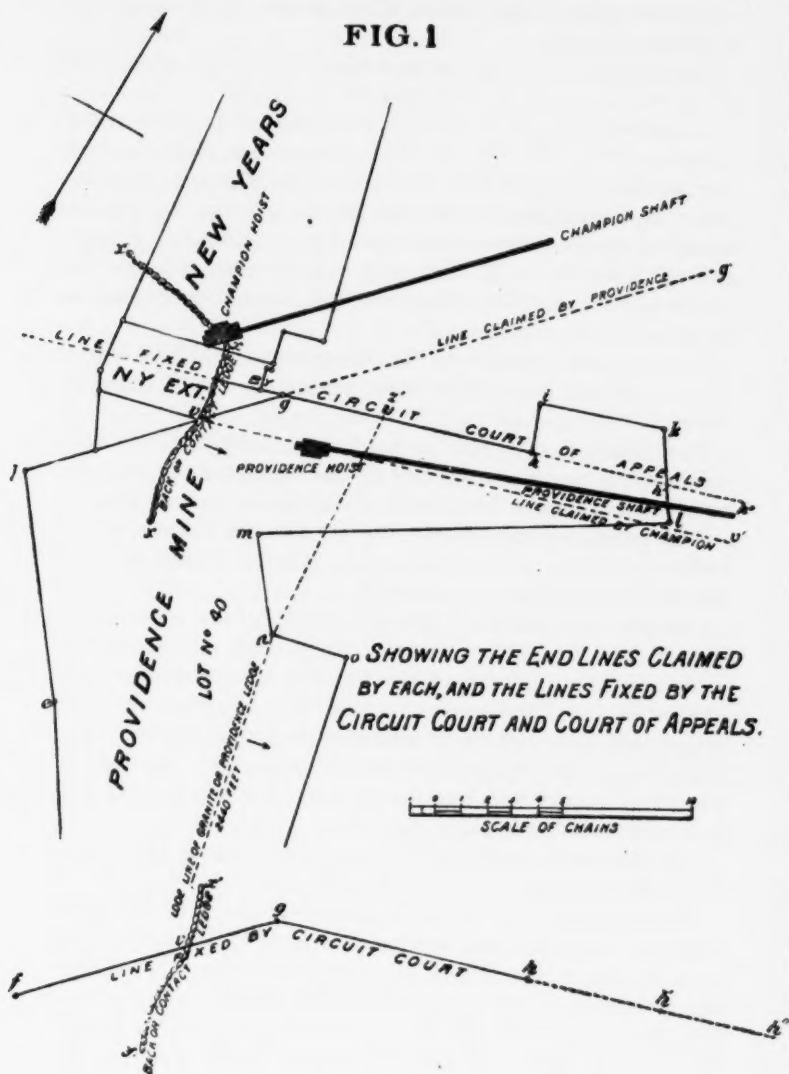
Upon motion of appellee the action was removed to the United States Circuit Court, as involving a Federal question, where the complainant recast his pleadings so as to separate the action into a bill in equity, upon which the action is now proceeding, and an action at law for the damages alleged.

The suit in equity was tried in the Circuit Court and decided mainly in favor of the appellee.

From this decree the appellant appealed to the Court of

Statement of the Case.

FIG. 1



Statement of the Case.

Appeals for the Ninth Circuit, where it was modified, and, as modified, affirmed.

The appellant now brings the case to this court upon writ of error from the Court of Appeals.

The appellant's title is deraigned as follows: In 1857, under the miners' rule and customs then in force, thirty-one locators located thirty-one hundred feet of the Providence or Granite lode. By mesne conveyances the title to this location became vested in the Providence Gold and Silver Mining Company, and on April 28, 1871, that company obtained a patent to thirty-one hundred feet of the lode and for surface ground as described in the patent.

The title thus granted to the Providence Gold and Silver Mining Company was, before the commencement of this suit, vested in the appellant.

The ledge, as granted by the patent, extends thirty feet north of the north surface line of the location and some six hundred and eighty feet south of the south surface line.

The patent conveyed only the Providence ledge and the surface ground. All other ledges contained within the surface lines were expressly reserved.

It is also contended by appellants that, by the act of Congress of May 10, 1872, exclusive possession of all the surface included within the lines of the location was granted to the owners of the Providence, together with all other lodes or ledges having their tops or apexes within such surface lines. This grant, of course, included the Contact vein, subsequently discovered within said boundaries, and now constituting the bone of contention in this action.

The Contact vein is shown in the figure, and crosses the surface line *f-g* of the Providence location.

On September 29, 1877, the appellee and defendant, the Champion Mining Company, made a location upon the Contact vein called the New Years Extension Mine. This location overlapped, both as to surface ground and lode, upon the Providence location; that is, the lode line and surface lines of the said New Years Extension extended to the south of the boundary line *f-g* of the Providence location.

Statement of the Case.

The New Years Extension Mine is shown in Figure No. 2, on page 298, together with the conflict caused by the overlap; the conflicting surface portions being shaded, and showing the Contact vein passing through it.

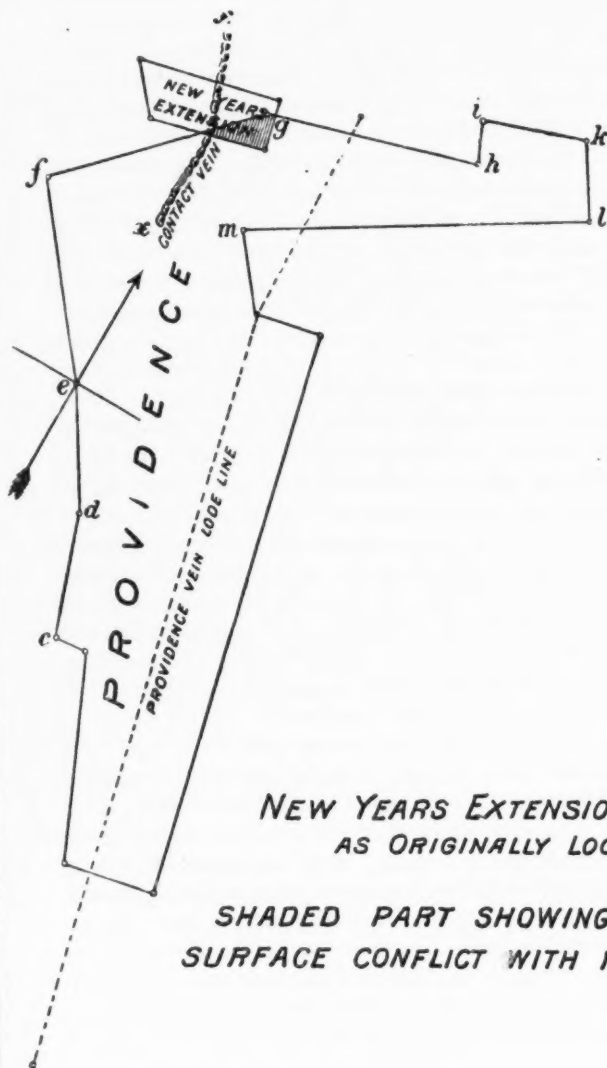
In the year 1884 the complainant and his coöwners objected to the overlap, and demanded of the Champion Mining Company that it abandon all claims to the surface and lode to the south of the Providence boundary line, above described. Thereupon, in the month of November, 1884, John Vincent, the superintendent of the defendant, the Champion Mining Company, under the authority and by the direction of the said company, relocated the New Years Extension Mine by a notice of relocation, in which the fact of the overlap under the original location was particularly recited, and the lines were readjusted so as to avoid the overlap and to conform to said line *f-g* of the Providence Mine, as shown on Figure 1.

In the notice of relocation the lode line was particularly described as follows: "The lode line of this claim as originally located, and which I hereby relocate, is described as follows: Commencing at a point on the northerly bank of Deer Creek, which point is 60 feet south, 11 degrees 45 minutes east of the mouth of the New Years tunnel, and running thence along the line of the lode towards the N.E. corner of the Providence mill, about S. 46 degrees 15 minutes east, 200 feet, more or less, to a point and stake on the northerly line of the Providence Mine, patented, designated as Mineral Lot No. 40 for the south end of said lode line."

It also contained the following statement:

"And whereas, part of this claim, as originally described and as hereby relocated, conflicts with the rights granted by letters patent of said Providence Mine, said Lot No. 40, now, therefore, so much of this claim, both for lode and surface ground, as originally conflicted or now conflicts with any portion of the surface or lode claims or rights granted by said patent, is and are hereby abandoned, which portion of this claim so abandoned is described as follows: All that portion of the above described New Years Extension Claim for surface and lode which lies south of the northern boundary line of said

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FIG. 2.

*NEW YEARS EXTENSION
AS ORIGINALLY LOCATED.*

*SHADED PART SHOWING LODE AND
SURFACE CONFLICT WITH PROVIDENCE.*

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Providence Mine, which runs north 43 degrees 10 minutes east, across the southeastern corner of this claim."

The New Years Extension, as relocated, is coterminous with the Providence Mine on the northerly boundary line, designated as the line *f-g*, running south 43 degrees west. (Fig. 1.)

That line is the only boundary between the two properties, and the only boundary of the Providence location which is crossed by the Contact ledge.

The first workings of the appellee involved no conflict with appellant. The shaft ran parallel with the Providence line, and none of the levels crossed that line until about three months before this suit was begun, when the 1000 foot level was driven across it into the ground in dispute. Subsequently the eighth and ninth levels were driven across.

The work done by the Providence was carried on through a shaft sunk on the Providence or Granite ledge, from which shaft a crosscut was run back to the Contact vein on the 600 foot level, and another on the 1250 foot level, and much of the ground now in controversy was thereby prospected and opened up by complainant and his coöwners. (See Fig. 1.)

The claims of the respective parties will be readily understood by reference to Fig. 1, which shows the relative position of all the mining properties belonging to both, with the lines claimed by them.

The portion of the Contact vein in dispute is that upon the dip of the ledge lying between the line marked "Line claimed by Providence" and the line marked "Line claimed by Champion."

The apex of the Contact vein is represented by the dotted line *x-x*¹, and shows the vein as far as exposed in both the Champion and Providence ground. South of *x* the course of the vein in the Providence ground is unknown.

The line *f-g* is the same line as that designated A-B by some of the witnesses.

Upon the trial the Circuit Court held that there could be but one end line for each end of the Providence location, and that the lines *g-h* and *a-p* constituted such end lines; that

Counsel for Appellant.

such lines constituted the end lines of not only the originally discovered Providence lode, but also of every other vein that might be discovered within the surface lines of the location. But, notwithstanding this holding, in entering the decree the line $f-g$ was also established as an end line of the Contact vein, but for its length only, and then that from " g " the line $g-h$, and that line extended indefinitely eastwardly, constituted another end line for the same end of the lode, and constituted the line through which the plane determinative of all extralateral rights in the vein must be drawn.

From this decree the appellant here was allowed an appeal to the Circuit Court of Appeals.

The latter court established the line $g-h-h^1$ as the sole end line of the Contact vein, and reversed the decree of the Circuit Court in so far as it fixed the line $f-g$ as an end line.

As a result of this decree the complainant was not only shut out of all extralateral rights in the Contact vein north of the line $g-h-h^1$, but also of that portion of the vein lying vertically beneath the surface lines of the Providence which extend north of that line, and which are marked upon the figures as constituting the parallelogram $h-i-k-h^1$, which was awarded to the Champion. (See Fig. 1, showing the end line fixed by the Circuit Court, and that line as subsequently fixed by the Court of Appeals, with the latter line extended in its own direction both eastwardly and westerly.)

From the judgment of the Circuit Court of Appeals the appellant has appealed to this court.

There are nine assignments of error. The first eight attack so much of the decree as establishes the line $g-h$ as an end line, for the purpose of determining the extralateral right, or fails to establish the line $f-g$, and that line produced indefinitely in the direction of g^1 as such end line. The last two assail so much of the decree as awards to appellee the right to pursue the vein on its downward course underneath the parallelogram $h-i-k-h^1$.

Mr. R. R. Bigelow for appellant. *Mr. Daniel Titus* and *Mr. James F. Smith* were on his brief.

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Mr. Curtis H. Lindley for appellee.

MR. JUSTICE McKENNA, after making the above statement, delivered the opinion of the court.

There are two questions presented by the assignment of errors:

(1.) What are the extralateral rights of the appellant on the Contact vein?

(2.) Is appellant entitled to that portion of the Contact vein within the Providence boundaries which lies north of the north end line fixed by the court, and which is described upon Fig. 1 as the parallelogram bounded by the lines marked *h-i-k-h*?

(1.) The appellant contends that the patent of the Providence ledge was conclusive evidence of his title to thirty-one hundred feet in length of that vein. If true, this carried the northern end of the ledge thirty feet beyond the line fixed by either the Circuit Court or the Circuit Court of Appeals. It was truly said at bar: "If it is not the end line of the Providence location, then certainly there is no reason for holding it to be the end line of the Contact vein."

The language of the patent is: "It being the intent and meaning of these presents to convey unto the Providence Gold and Silver Mining Company, and to their successors and assigns, the said vein or lode in its entire width for the distance of thirty-one hundred (3100) feet along the course thereof."

The patent was issued under the act of 1866, and it is necessary, therefore, to some extent to consider that act. By it, the appellant urges, the principal thing patented was the lode, and that the northern limit of that, and hence of his rights on that was thirty feet north of the line fixed by the Circuit Court of Appeals; and hence it is further contended that as the northern and southern surface line (*g-h* and *a-p*) did not determine or limit his right to the lode under the act of 1866—in other words, did not become end lines—they do not become end lines upon the Contact ledge (*x'-x''*) acquired under the act of 1872, but that the surface line which crosses

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the strike of that ledge must be held to be the end line, and the line which fixes the rights of the parties. This line is *f-g*, Fig. 1, and, if appellant is correct, determines the controversy in his favor.

The extent of the right passing under the act of 1866 has been decided by this court.

In *Mining Co. v. Tarbet*, 98 U. S. 463, known as the *Flagstaff case*, the superficial area of the Flagstaff Mine was one hundred feet wide by twenty-six hundred feet long. It lay across the lode, not with it, and the company contended, notwithstanding that, it had a right to the lode for the length of the location. In other words, the contention was that it was the lode which was granted, and that the surface ground was a mere incident for the convenient working of the lode. The contention was presented and denied by the instructions which were given and refused by the lower court. That court instructed the jury that if they found Tarbet "was in possession of the claim, describing it, holding the same in accordance with the mining laws and the customs of the miners of the mining district, and that the apex and course of the vein in dispute are within such surface, then, as against one subsequently entering, he is deemed to be possessed of the land within his boundaries to any depth, and also of the vein in the surface to any depth on its dip, though the vein in its dip downward passes the side line of the surface boundary and extends beneath other and adjoining lands, and a trespass upon such part of the vein on its dip, though beyond the side surface line, is unlawful to the same extent as a trespass on the vein inside of the surface boundary. This possession of the vein outside of the surface line, on its dip, is limited in two ways — by the length of the course of the vein within the surface; and by an extension of the end lines of the surface claim vertically, and in their own direction, so as to intersect the vein on its dip; and the right of a possessor to recover for trespass on the vein is subject to only these restrictions."

Again: "The defendant (plaintiff in error) has not shown any title or color of title to any part of the vein, except so much of its length on the course as lies within the Flagstaff

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surface, and the dip of the vein for that length; and it has shown no title or color of title to any of the surface of the South Star and Titus mining claim, except so much of No. 3 as lies within the patented surface of the Flagstaff mining claim."

And the following instructions propounded by the owner of the Flagstaff:

"By the act of Congress of July 26, 1866, under which all these locations are claimed to have been made, it was the vein or lode of mineral that was located and claimed; the lode was the principal thing, and the surface area was a mere incident for the convenient working of the lode; the patent granted the lode, as such, irrespective of the surface area, which an applicant was not bound to claim; it was his convenience for working the lode that controlled his location of his surface area; and the patentee under that act takes a fee simple title to the lode, to the full extent located and claimed under said act."

Commenting on the instructions, Mr. Justice Bradley, speaking for the court, said:

"These instructions and refusals to instruct indicate the general position taken by the court below, namely, that a mining claim secures only so much of a lode or vein as it covers along the course of the apex of the vein on or near the surface, no matter how far the location may extend in another direction."

And after stating that the act of 1872 was more explicit than that of 1866, but the intent of both undoubtedly the same, as it respects lines and side lines, and the right to follow the dip outside of the latter, he proceeded as follows:

"We think that the intent of both statutes is, that mining locations on lodes or veins shall be made thereon lengthwise, in the general direction of such veins or lodes on the surface of the earth where they are discoverable; and that the end lines are to cross the lode and extend perpendicularly downwards, and to be continued in their own direction either way horizontally; and that the right to follow the dip outside of the side lines is based on the hypothesis that the direction of

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these lines corresponds substantially with the course of the lode or vein at its apex on or near the surface. It was not the intent of the law to allow a person to make his location crosswise of a vein so that the side lines shall cross it, and thereby give him the right to follow the strike of the vein outside of his side lines. That would subvert the whole system sought to be established by the law. If he does locate his claim in that way, his rights must be subordinated to the rights of those who have properly located on the lode. Their right to follow the dip outside of their side lines cannot be interfered with by him. His right to the lode only extends to so much of the lode as his claim covers. If he has located crosswise of the lode, and his claim is only one hundred feet wide, that one hundred feet is all he has a right to. This we consider to be the law as to locations on lodes or veins.

"The location of the plaintiff in error is thus laid across the Titus lode, that is to say, across the course of its apex at or near the surface; and the side lines of the location are really the end lines of the claim, considering the direction or course of the lode at the surface.

"As the law stands, we think that the right to follow the dip of the vein is bounded by the end lines of the claim, properly so called; which lines are those which are crosswise of the general course of the vein on the surface. The Spanish mining law confined the owner of a mine to perpendicular lines on every side, but gave him greater or less width according to the dip of the vein. See Rockwell, pp. 56-58 and pp. 274-275. But our laws have attempted to establish a rule by which each claim shall be so many feet of the vein, lengthwise of its course, to any depth below the surface, although laterally its inclination shall carry it ever so far from a perpendicular. This rule the court below strove to carry out, and all its rulings seem to have been in accordance with it."

This law was followed and applied in *Argentine Mining Co. v. Terrible Mining Co.*, 122 U. S. 478; in *Iron Silver Mining Co. v. Elgin Mining Co.*, 118 U. S. 196; and in *King v. Amy & Silversmith Min. Co.*, 152 U. S. 222. The locations passed upon in these cases were made under the act of 1872,

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but we have seen that the intent of that act and the act of 1866, "as it respects end lines and side lines," was the same.

But appellant urges that "those cases are not in point here." We think that they are. The patent in the *Flagstaff* case appears to have been the same as here, and besides whatever the patent here it must be confined to the rights given by the statute which authorized it.

In the *Flagstaff* case the lode was claimed, and hence the right to follow it beyond the surface boundaries of the location was claimed. Here the lode is claimed and the right to follow it outside of the surface boundaries, that is, beyond the line *f-g* to the point *x*¹. In that case the right contended for was denied on the principle applicable to end and side lines. In this case the right contended for must be denied by the application of the same principle.

But, appellant asks, admitting for the argument's sake that it (the line *g-h*) does constitute an end line of the location within the meaning of the law of May 10, 1872, does it constitute the end line of the Contact vein? And in answering the question he says: "The end line of a lode is the boundary line which crosses it regardless of whether it was originally intended as an end line or side line. Four times has this principle been sustained by this court." He then cites the cases we have cited, and claims that they "are of course conclusive of this controversy if they are in point."

Under the law of July 26, 1866, c. 262, a patent could be issued for only one vein. 14 Stat. 251. The act of 1872 gave to all locations theretofore made, as well as to those thereafter made, all veins, lodes and ledges the top or apex of which lie inside of the surface lines. Section 3 of the act, which is also section 2322 of the Revised Statutes, is as follows:

"The locators of all mining locations heretofore made, or which shall hereafter be made, on any mineral vein, lode or ledge, situated on the public domain, their heirs and assigns, where no adverse claim exists on the tenth day of May, eighteen hundred and seventy-two, so long as they comply with the laws of the United States, and with the state, ter-

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ritorial and local regulations not in conflict with the laws of the United States governing their possessory title, shall have the exclusive right of possession and enjoyment of all the surface included within the lines of their locations, and of all veins, lodes and ledges throughout their entire depth, the top or apex of which lies inside of such surface lines extended downward vertically, although such veins, lodes or ledges may so far depart from a perpendicular in their course downward as to extend outside the vertical side lines of such surface locations. But their right of possession to such outside parts of such veins or ledges shall be confined to such portions thereof as lie between vertical planes drawn downward, as above described, through the end lines of their locations, so continued in their own direction that such planes will intersect such exterior parts of such veins or ledges. And nothing in this section shall authorize the locator or possessor of a vein or lode which extends in its downward course beyond the vertical lines of his claim to enter upon the surface of a claim owned or possessed by another." Act of May 10, 1872, c. 152, § 3; Sec. 2322, Rev. Stat.

Appellant's right upon the Contact vein is given by this statute. What limits this right extralaterally? The statute says vertical planes drawn downward through the end lines of the location. What end lines? Those of and as determined by the original location and lode, the Circuit Court of Appeals decided. Those determined by the direction of the newly discovered lodes, regardless whether they were originally intended as end lines or side lines, the appellant, as we have seen, contends. The Court of Appeals was right. Against the contention of appellant the letter and spirit of the statute oppose, and against it the decisions of this court also oppose.

The language of the statute is that the "outside parts" of the veins or ledges "shall be confined to such portions thereof as lie between vertical planes drawn downwards . . . through the end lines of their locations. . . ." And Mr. Justice Field, speaking for the court, said, in *Iron Silver Mining Co. v. Elgin Mining Co.*, 118 U. S. 196, 198:

"The provision of the statute, that the locator is entitled

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throughout their entire depth to all the veins, lodes or ledges, the top or apex of which lies inside of the surface lines of his location, tends strongly to show that the end lines marked on the ground must control. It often happens that the top or apex of more than one vein lies within such surface lines, and the veins may have different courses and dips, yet his right to follow them outside of the side lines of the location must be bounded by planes drawn vertically through the same end lines. The planes of the end lines cannot be drawn at a right angle to the courses of all the veins if they are not identical."

The court, however, did not mean that the end lines, called such by the locator, were the true end lines, but those which "are crosswise of the general course of the vein on the surface."

This court in *Del Monte Mining Co. v. Last Chance Mining Co.*, decided at the present term, *ante*, 55, reviewed the cases we have cited, and, speaking for the court, Mr. Justice Brewer said:

"Our conclusion may be summed up in these propositions: First, the location as made on the surface by the locator determines the extent of rights below the surface; second, the end lines, as he marks them on the surface, with the single exception hereinafter noticed, place the limits beyond which he may not go in the appropriation of any vein or veins along their course or strike; third, every vein, 'the top or apex of which lies inside of such surface lines extended downward vertically,' becomes his by virtue of his location, and he may pursue it to any depth beyond his vertical side lines, although in so doing he enters beneath the surface of some other proprietor; fourth, the only exception to the rule that the end lines of the location as the locator places them establish the limits beyond which he may not go in the appropriation of a vein on its course or strike is where it is developed, that, in fact, the location has been placed not along, but across the course of the vein. In such case, the law declares that those which the locator called his side lines are his end lines, and those which he called end lines are in fact side lines, and this, upon the proposition that it was the intent of Congress to give

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to the locator only so many feet of the length of the vein, that length to be bounded by the lines which the locator has established of his location. Our laws have attempted to establish a rule by which each claim shall be so many feet of the vein, lengthwise of its course, to any depth below the surface, although laterally its inclination shall carry it ever so far from a perpendicular." *Mining Company v. Tarbet*, 98 U. S. 463-468.

These propositions we affirm, with the addition that the end lines of the original veins shall be the end lines of all the veins found within the surface boundaries.

The appellant contends that by agreement, by acquiescence and by estoppel the line *f-g* has become the end line between the two claims.

This contention is attempted to be supported by; (a), a relocation of the New Years Extension Claim, by which it is asserted it recognized and designated the line *f-g* as the northerly end line of the Providence claim; (b), the testimony of the superintendent as to what took place between him and the directors before sinking the Champion shaft, and afterwards between him and a cotenant of complainant (appellant).

(a.) The relocation does not in terms recognize the line *f-g* as the northern end line of the Providence. Its recitals are:

"And whereas, part of this claim as originally described and as hereby relocated, conflicts with the rights granted by the letters patent of said Providence Mine, said Lot No. 40, now, therefore, so much of this claim, both for lode and surface ground, as originally designated, conflicting, or now conflicts, with any portion of the surface or lode, claims or rights granted by said patent, is and are hereby abandoned."

"Which portion of this claim so abandoned is described as follows: All that portion of the above described New Years Extension Claim for surface and lode which lies south of the northern boundary line of said Providence Mine, which runs north 43 degrees, 10 minutes east, across the southeastern corner of this claim."

It will be observed by reference to Fig. 1 that the northern

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boundary of the Providence is not one line, but two lines, and it is the one which runs north 43° 10' east across the southern corner, which is designated in the relocation of the New Years claim.

In the notice of relocation, however, the northerly line of the Providence is called the south end line of the relocated ground. The description is as follows:

"The lode line of this claim as originally located, and which I hereby relocate, is described as follows: Commencing at a point on the northerly bank of Deer Creek, which point is 80 feet S., 11 deg. 45 minutes east of the mouth of the New Years tunnel and running thence along the line of the lode towards the N.E. corner of the Providence Mill, about S. 46 deg. 15 minutes east, 200 feet more or less, to a point and stake on the northerly line of the Providence Mine, patented, designated as Mineral Lot No. 40 for the south end of said lode line. And that the Contact vein crosses in its onward course the southerly end line of said New Years Extension Claim and enters the lands and premises of plaintiff described in said bill of complaint."

It is hence contended that if the line *f-g* is the southerly end line of the New Years extension it must necessarily be the northern end line of the Providence Mine. This does not follow, nor is there any concession of it. Coincidence of lines between claims does not make them side lines or end lines. Whether they shall be so regarded depends upon the legal considerations which we have already sufficiently entered into and need not repeat. We do not say that there may not be an agreement settling end lines. One example of such an agreement was exhibited in *Richmond Mining Co. v. Eureka Mining Co.*, 103 U. S. 839.

(b.) The testimony relied on was admitted against the objection of defendants (appellees). It was as follows:

"Q. Then you may go on, Mr. Vincent, and state how you started that work, and how you planned it, and what communications you had, if any, with the board of directors of the Champion Mining Company.

* * * * *

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"A. Well, I was sent up by the board of directors to do whatever work I thought was for the best of the company. I started that shaft down and had it down about 40 feet, and I reported to the board of directors in session about what work I had done, and they calculated to go to work and put up hoisting works and run that shaft down further.

"Q. What, if any, communication did you make, or was there any communication from the board to you concerning the direction of the shaft, and why any given direction was adopted for the shaft?

"A. There was none, but then I reported to the board that such was the case, that the shaft was laid out so it would never interfere with this line."

The witness further testified that he sank the shaft 540 feet and was discharged on the 1st of August, 1889, and he was further questioned as follows:

"Q. State whether at the time you were sinking that shaft you were called upon by Mr. Walrath, the complainant in this action, or his brother Mr. Richard Walrath, to make any inquiry of you concerning the construction of that shaft and what the intention was, whether to cross the Providence line or not, as marked on the map?

* * * * *

"A. Well, Mr. Walrath he happened to come along, and he made a remark to me that he wished for us, of course, to keep his line and not to cross it as he didn't want any more trouble as he did have with some other mining properties adjoining; that he didn't want any more holes in his ground, and so I answered him that I would respect his line as long as I am here.

"THE COURT. — That you would respect his line as long as you were there?

"A. As long as I was superintendent of the mine.

"Q. Where did this conversation take place?

"A. Right on the premises.

"Q. You were then acting as superintendent, were you?

"A. Yes, sir.

"Q. What line was referred to at that time as the Providence line; can you point it out on the map?

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"A. Yes, sir; it is the line marked 'A B' on the map, Exhibit 4."

This testimony does not establish an equitable estoppel, nor is the corporation bound by the declarations of the superintendent. They were without the scope of his agency or authority.

(2.) The right of that portion of the Contact ledge within the boundaries of the parallelogram $h-i-k-h^1$ presents an interesting question. It does not appear to have been submitted to either of the lower courts, but the right by the decree of the Circuit Court is given to appellee by adjudging to it that portion of the vein on its dip which lies northeasterly of the line $g-h$ and its continuation.

The question is a new one in this court, but we think it is determined by the principles hereinbefore laid down. It may be true that under the act of 1866 the patenting of the Providence Mine in its irregular shape was in all respects legal and proper, and that the act did not require the location to be made in the form of a parallelogram or in any particular form, and that there was no requirement that the end lines should be parallel. It is also true that under that act only one vein could be included in a location, no matter how much surface ground was included in the patent, but that under the act of 1872 possession and enjoyment of all the surface included within the lines of their location and of all veins, lodes and ledges throughout the entire depth, the top or apex of which lies inside of such surface lines extended downward vertically, were given.

But rights on the strike and on the dip of the original vein and rights on the strike and on the dip of the other veins, we have decided, are determined by the end lines of the location. In other words, it is the end lines alone, not they and some other lines, which define the extralateral right, and they must be straight lines, not broken or curved ones. The appellant, under his contention, would get the right such lines would give him and something more besides outside of them. To specialize, he would get all within a plane drawn through the line $g-h$, and all within the planes drawn through the sides of the parallelogram $h-i-k-h^1$ (Fig. 1).

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It may be that the end lines need not be parallel under the act of 1866; may converge or diverge, and may even do so as to new veins, of which, however, we express no opinion, but they must be straight — no other define planes which can be continuous in their own direction within the meaning of the statute. It may be that there was liberty of surface form under that act, but the law strictly confined the right on the vein below the surface. There is liberty of surface form under the act of 1872. It was exercised in *Iron Silver Mining Co. v. Elgin Mining Co.*, *supra*, in the form of a horseshoe; in *Montana Co. Limited v. Clark*, 42 Fed. Rep. 626, in the form of an isosceles triangle.

The decree is affirmed.
